

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Tuesday, August 6, 1957

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The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 9:30 o'clock A. M., in accordance with the rule.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable Thomas D. Beasley and Honorable Andrew J. Musselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, the Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

Adams	Carraway	Hair	Neblett
Beall	Clarke	Hodges	Pearce
Belser	Connor	Houghton	Pope
Bishop	Davis	Johns	Rawls
Boyd	Dickinson	Johnson	Shands
Brackin	Eaton	Kelly	Stenstrom
Branch	Edwards	Kicklitter	Stratton
Cabot	Gautier	Knight	
Carlton	Getzen	Morgan	

—34.

A quorum present.

CHIEF JUSTICE TERRELL: Senator Kicklitter, will you pray?

SENATOR KICKLITTER: Our Heavenly Father, we humbly send up our thanks for the privilege of meeting together again this morning, to resume our duties to our great State for another God-given day.

We especially ask Thy blessings upon our esteemed Presiding Justice Terrell, whose wisdom, advice and counsel we lean upon so heavily.

O, Lord, bless the members of this Senate, the Representatives of this State, the defense counsel and the accused. Give consolation to all those that sorrow.

We beseech Thee, O Lord, to equip each of us with mental and spiritual understanding to meet that great challenge laid down by the Court who said, "Such things tried men's souls."

And finally, O Lord, let us hope and pray that each member of this High Court will abundantly recognize and understand the rich words contained in the greatest Book of Books, such as: "Judge not, that ye be not judged"; "We are our brother's keeper"; "Do unto others as you would have them do unto you," as we continue in the service of our oaths, for Him and in His Name. Amen.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will make the proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Monday, August 5, 1957, was dispensed with.

The Senate daily Journal of Monday, August 5, 1957, was corrected and as corrected was approved.

CHIEF JUSTICE TERRELL: Is the Respondent ready?

MR. HUNT: Yes sir.

Call Mr. Wasserman, please.

CHIEF JUSTICE TERRELL: Order in Court.

Thereupon,

SIDNEY WASSERMAN,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Sidney Wasserman.

Q How do you spell the last name, Mr. Wasserman?

A W-a-s-s-e-r-m-a-n.

Q Where do you reside?

A 2210 Southwest Seventeenth Street, Miami, Florida.

Q What is your trade or occupation?

A I am a certified public accountant.

Q For what period of time, Mr. Wasserman, have you been a certified public accountant?

A In the State of Florida, since 1940.

Q And were you a certified public accountant prior to your coming to Florida?

A I was, in New York, since 1936.

Q Since 1936, in New York?

A That's right.

Q Where is your office located in Dade County?

A 420 Lincoln Road, Miami Beach.

Q Are you employed, or do you have your own firm at that address?

A I have my own firm, sir.

Q Under what name do you practice the profession of certified public accountancy?

A Sidney Wasserman & Company.

Q Mr. Wasserman, have you had occasion to make up reports and audits, and to do work of a certified public accountant in connection with the different aspects of the Dowling estate matter?

A I have, sir.

Q Will you state to the Senate when you first came into the matter, and by whom employed, and what transpired, from the beginning?

A I was employed by Julius Jay Perlmutter immediately after he was appointed temporary receiver by Judge Holt.

Q Do you remember when that was?

A Well - - - can I refer to my files?

Q You may refer to your files as we go along.

A I believe it was about March or April of 1954.

Q March or April, 1954?

A I think so.

MR. HUNT: If Your Honor please, while the witness is searching for that, when opposing counsel get word from the Attorney General's Office on the matter which we discussed this morning, I would like to have that testimony produced - - -

CHIEF JUSTICE TERRELL: All right.

MR. HUNT: - - - so as not to ask for a delay here later on.

CHIEF JUSTICE TERRELL: Yes.

BY MR. HUNT:

Q What is the first service you performed for Mr. Perlmutter, Mr. Wasserman?

A I received the books of the - - - books of Mr. Dowling, some statements of Mr. Dowling, and prepared an inventory for him.

Q When was that?

A That was March 25, 1954.

Q Now, where had Mr. Perlmutter procured those books and records? From here, or where?

A No, Mr. Perlmutter, I think, procured them from the Court at the time he was appointed receiver.

The books had been brought into Court by - - -

Q Will you pull the microphone up toward you just a wee bit; not too much.

That's good.

A The books had been brought into Court, I think, by Mr. Dowling's bookkeeper, Mrs. Donlin.

Q By whom?

A Mrs. Donlin; had been brought down from Massachusetts for the purposes of a trial.

Q And you received them from Mr. Perlmutter?

A That's right.

Q After his appointment?

A Yes sir.

Q What were your instructions at that time?

A To prepare an inventory and keep his accounts, as receiver.

Q Did you prepare such an inventory?

A I did.

Q Now, what did you do incident to the preparation of that inventory?

A Well, I went through the statements and through the books, which were inadequate at the time, and listed what I could find at that time.

Q Did you make inquiry in Massachusetts at that time, or did you have the Massachusetts records?

A I had some of the Massachusetts records, and I had Mr. Dowling's statements, and I went through those statements.

Q Well, from the books and records before you, did you prepare an inventory?

A I did.

Q Do you have a copy of it?

A I have a pencil copy of the inventory, which was listed at book value at the time it was turned over to Mr. Perlmutter.

Q Which was what?

A Which was listed at book value, the value shown on his - - - on Mr. Dowling's ledger.

Q In other words, you inventoried all the assets which came into the possession of the receiver at the book value - - -

A That's right.

Q - - - as carried on Mr. Dowling's records?

A That's right.

Q Will you state what the total book value of those assets was?

A \$337,469.78.

Q What is that?

A \$337,469.78.

Q Now, what do those assets consist of?

A Shall I read them, sir?

Q What did the assets consist of, please?

A Shall I read them off? I have a list here.

Q Well, is it a long list?

A About - - -

Q Can you classify them? Stocks, bonds, real estate - - -

A Well, there was \$146 in cash - - -

Q Well, now, we're not interested in \$146.

A Yes sir.

Q Can you tell us, generally, the real estate, where it was located, and what it was worth, and the bonds and the stocks - - -

A Yes.

Q - - - and the stocks, and the big kale?

A There were no bonds and stocks in this thing.

There was a Miami building, at 830 Lincoln Road, with a book value of \$179,384.13 - - -

Q Now, which property was that?

A 830 Lincoln Road.

Q 830 Lincoln Road?

A That's right.

Q What was the book value?

A \$179,384.13.

Q All right.

A A land and building at 1100 Bay Drive; the book value was \$31,945.42.

Q Go ahead.

A The building at 744 Lincoln Road, a book value of \$50,-993.48.

The two yachts, there was a book value of \$15,500.

Q \$15,500?

A That's right.

Q Go ahead.

A That's all of them.

Q That total was what?

A There was an exchange receivable from Nat Klein, of \$9,500.

Q \$9,500?

A Yes.

Q Did you learn what that represented?

A That represented money that Mr. Dowling had given Mr. Klein to hold for him.

Q To hold for him?

A That's right.

Q And the total of those assets was what?

A \$337,469.78.

Q Now, did you have occasion to inventory, or to prepare a statement, listing all of the assets of Mr. Dowling's, including the Massachusetts - - -

A Yes - - -

Q - - - property?

A - - - much later.

Q How much later?

A On June of 1956, June 22, at Mr. Heller's request, I prepared a letter of the assets that had come into his possession, his and Mr. Prunty's.

Q Well, let me ask you this:

Prior to that time, is the report which you prepared for Mr. Perlmutter the only report which you had occasion to prepare in the matter?

A That's right, except for occasional accountings to the Court.

Q Well, what do you mean, "occasional accountings"? Did you prepare an interim report of some kind?

A I don't think so.

Q Were you asked, on one occasion, to make an inventory of the needs of Mr. and Mrs. Dowling when they decided to reside in Florida?

A Yes, I did that for Mr. Heller. I prepared a report; that was for Mr. Heller.

Q Well, when was that?

A I should have that here too.

Q Is this what you're looking for?

A Yes, oh, yes.

Q What occasioned a request for the report about which you are about to testify on?

A Mr. Heller had requested me to prepare an accounting to present to the Court, and also, my opinion of whether the Florida income was going to be sufficient to meet the needs of the Dowlings, under the circumstances, in which the Dowlings were going to reside here twelve months a year - - -

Q When - - -

A - - - and that - - -

Q Excuse me. When was that?

A January 20, 1955.

Q 1955?

A Yes sir.

Q At that time were you or not aware of any diminishment in Mr. Dowling's Massachusetts income?

A Oh, yes, oh, yes.

Q Will you state to the Senate what you knew about it?

A Well, Mr. Dowling had a building in Malden, Massachusetts, an office building, which, up until 1951, had brought him in a cash income of some \$52,000 a year.

The following year, 1952, according to his accountant's statement, a lease had been made to Jordan Marsh, a fifty-year-lease, which was a net lease, but the result of which brought in only \$13,000 a year, a diminution of about \$40,000 a year in cash income from that piece of property.

Because of the lack of this money, I think the original incompetency action started.

That missing \$40,000 didn't diminish Mr. Dowling's spending any, and there wasn't enough income in the Florida assets to spend money the way he liked to, or what his needs were.

Q Well, did you prepare a report for presentation to the Court?

A I did, sir.

Q Will you state what that report shows, and the manner in which you went about its preparation?

A I had the figures of what had been spent on his behalf by the curators; I had the income figures for the year; I had to estimate, but I estimated very conservatively what expenses I didn't have, and when I put it together, I showed that, from his Florida income, as compared to the Florida expenses of maintaining the properties, in addition to Mr. and Mrs. Dowling's expenses, there would be left approximately \$300.

Since they were both ill, I not only arranged for \$1,000 in medical expenses, plus the fact that they probably needed a new car, and there were other things that had to be done, I didn't think that would be enough for the following year.

Q And how much did you say his net income had diminished prior - - - immediately prior to that, as a result of the improvident Massachusetts lease?

A About \$40,000 a year.

Q Was cut off from his normal income?

A That's right.

Q And then, the question presented the Florida curators was whether or not the income from his Florida holdings would be sufficient to sustain him?

A That's right.

Q And did you deliver that report to the curators?

A I did.

Q Do you know whether or not they filed an interim report, and asked the Court for instructions on the basis of that report?

A I think so, but I don't know.

Q Was it or not your opinion, from the state of the Dowling affairs, that some property had to be liquidated into cash to provide for the welfare of the Dowlings?

A Well, I knew something had to be done, and I - - - it was my opinion that something should have been liquidated, but I didn't know how they were going to go about providing the extra money; I just pointed out that extra money would be needed.

Q Mr. Wasserman, I have handed you what appears to be a 1952 audit report of Percy W. Taylor, C. P. A., of Melrose, Massachusetts. Do you have that before you?

A Yes sir.

Q Does that refer to Mr. Dowling's affairs as of that time?

A Yes sir.

Q Will you read the first two paragraphs under "Comment," on the first page?

A "Operations for the year under review have resulted in a net income, before taxes, of \$56,376.12 after the elimination of bad loans in the amount of \$8,500.

"This net income of \$56,376.12, as compared to that of the preceding year, of \$69,289.34" - - -

MR. MUSSELMAN: Just a minute.

May it please the Court, we have no objection to its being read, but I would like to know if there's a copy of this in the Court files, or if the gentleman who made this report will be available for us to cross examine - - -

MR. HUNT: It certainly will.

MR. MUSSELMAN: Both of them?

MR. HUNT: Yes sir.

A (Continuing) - - - "a decrease of \$12,913.22. This is traced to the substantial decrease of revenue from the Malden property. Gross revenue for 1950 was \$202,909.90, and for 1951, \$140,880.63, a decrease of \$62,029.27."

Q Now, what is the date of that report?

A March 28, 1952.

Q And it evidences a net decrease over the previous year of how much?

A \$62,029.27.

Q It decreased from sixty-two to what?

A No, it decreased in gross revenue from two hundred and - - -

Q I'm not talking about gross.

A Net, the decrease was \$12,913.22.

Q Under the previous year - - -

A Yes.

Q - - - correct?

A Uh huh.

Q Now, then, I hand you an April 1, 1953 report of the same auditor, addressed to Mr. Dowling, and will ask you to read the first two paragraphs of the "Comment" on the front page.

A "Results of operations show a substantial decrease in the preceding year. The net income before Federal tax was \$24,772.74, as compared to \$56,376.12 for the preceding year."

Q Will you read that again, please? The net what?

A "The net income before Federal tax was \$24,772.74, as compared to \$56,376.12 for the preceding year."

Q Very well.

Now, let me ask you this: Where did those two reports come from, Mr. Wasserman?

A They came from - - -

Q Or rather - - -

A - - - Percy W. Taylor, the Massachusetts accountant for Mr. Dowling.

Oh, you mean where I got them?

Q Yes.

A They were introduced in evidence in the original trial.

Q Before Judge Holt?

A Before Judge Holt.

Q Is that the time the books and records, generally, of Mr. Dowling, were also introduced in evidence?

A That's right.

Q And were you requested to take all books and records, including those audit reports, and from that to form the basis of your own work?

A That's right.

Q And have they been in your possession since?

A They have been in my possession; the books and records I turned over to Mr. Heller.

Q The Curator?

A After he was appointed, that's right.

Q Does it show on the outer flap of those reports that they were introduced in evidence before Judge Holt?

A It does.

MR. HUNT: We would like to offer those in evidence, Your Honor, with the suggestion that they should be returned to the Clerk's Office when the files are returned.

CHIEF JUSTICE TERRELL: That will be the order.

(Whereupon, said auditor's reports were received and filed in evidence as Respondent's Exhibits 7 and 8, respectively.)

MR. HUNT: We likewise offer a third report from the same public accountant, of Melrose, Massachusetts, report for the year ended December 31, 1953.

MR. BEASLEY: Has he read from that?

MR. HUNT: No.

MR. BEASLEY: How about letting him read from it?

MR. HUNT: You can cross examine him on it.

CHIEF JUSTICE TERRELL: Is there any objection to that?

MR. BEASLEY: There's no objection to them as being a part of the record, Your Honor.

(Whereupon, said auditor's report, for year ending December 31, 1953, was received and filed in evidence as Respondent's Exhibit 9.)

BY MR. HUNT:

Q Now, Mr. Wasserman, after preparation of the interim inventory, you might say, of the contingent and prospective needs of Mr. and Mrs. Dowling, were you later requested to prepare a statement for my purposes, of the Florida assets?

A Yes sir, yes sir, I have - - -

Q Did you prepare such a statement?

A I did.

Q Mr. Wasserman, I have handed you Respondent's Exhibit Number 3 for identification. I'll ask you to state what it is.

A This is an inventory I prepared, addressed to you, at the request of Mr. Heller.

Q What's the date of it?

A June 22, 1956.

Q And will you read the foregoing portions of it?

A I don't understand. You want me to - - -

Q The first paragraph.

A Oh.

"At the request of Mr. Heller I am summarizing below the value of the properties which came into the possession and control of Daniel Neal Heller and John W. Prunty, curators for Jewell A. Dowling and Ina I. Dowling."

Q And now, what - - - did you then list and summarize the property?

A I did, sir.

Q Will you state what they were, as of that time, according to that report?

A Yes.

There was cash in the bank of \$11,050.99; the guest house on Bay Drive was valued at \$29,500.

Q Now, that was the actual sales price, was it?

A Yes sir.

Q Go ahead.

A The residence at Bay Drive was valued at \$58,500.

Q Was that at inventory appraised value?

A Well, it was an average of the two appraisals by Mr. Bennett and Mr. McCune.

Q By Mr. Bennett and Mr. McCune?

A That's right.

Q Does it show what the appraisals were?

A No, but the appraisals - - -

Q Do you have - - -

A - - - were \$3,000 apart, and I just took an average for the value here.

Q That came out to what? Fifty-eight - - -

A \$58,500. The fee title at Lincoln Road is listed at \$277,500. Here again I used the average of the two appraisals by Mr. Bennett and Mr. McCune.

The boats were valued at the sales price of \$7,250.

Q They had already been sold at that - - -

A That's right.

Q - - - amount?

A That's right.

The lessee's interest in a ninety-nine-year lease, I also valued at the sales price of \$127,500.

The assets of Ina Dowling, which consisted mostly of personal property is listed at \$326,549.07. This figure I got from the report of Forrest S. Emory, who was the temporary conservator in Massachusetts.

Rents collected from tenants during the period of curatorship, \$26,686.20; Oldsmobile at sale price, \$450; rent collected from ninety-nine-year lease made on Lincoln Road property, \$52,500; store rent collected for estate of Jewell Alvin Dowling, deceased, \$3,500; and dividends collected directly or received from Massachusetts conservator for Ina I. Dowling, \$18,685.48.

This gave me a total of \$939,671.74.

Q Well, that represents the assets and collections of the curators up till that time?

A That's right, sir.

Q And the Ina Dowling securities were included?

A Yes sir.

Q Had you been advised of the fact that her securities were returned to her sometime after they were taken over?

A Yes sir, but at the same time, they were appointed curators of all the assets of Ina Dowling. I took that to mean wherever the assets were located.

Q Was this sometime - - - strike that.

How long after their appointment, if you know, was it that the Ina Dowling assets were returned to Massachusetts?

A Well, I never got official knowledge. I know at the time that I prepared this I knew that they weren't in the State of Florida.

I know that most of them were here at one time. I don't know exactly when they went back.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. MUSSELMAN:

Q In regard to this last, as I understand, you filed three reports, of varying nature, the final one in the form of a letter addressed to Mr. Hunt. Is that correct?

A I think I prepared more than three reports of varying nature.

Q I say, you testified to three here this morning?

A Oh, yes sir, yes sir.

Q In regard to the report that you gave Mr. Hunt, you did include in the total that you arrived at the assets of Mrs. Dowling, namely, the stocks and bonds that were returned to Massachusetts, isn't that correct?

A I did.

Q And what figure do you show in your reports for those?

A \$326,549.07 - - - wait a minute, I'm sorry - - no, that's right, \$326,549.07.

Q Also, in drawing your total, you include the fee simple title of value, which is a compromise between the two appraisals, is that correct?

A That's right.

Q But later on, you show the rents also collected from that same asset, do you not?

A That's right.

Q And what was the rents that you showed as collected in addition to the value of the fee?

A Well, I've got two rent collections here, sir, one of twenty-six - - - I think I've got more than - - - \$26,686.20, and one of \$52,500.

I think that the \$26,000 item came from that fee during that period.

Q All right, sir. You included the rent prior to the time it was placed under the ninety-nine-year lease, and then you included the rent that was paid in advance on the ninety-nine-year lease, is that correct?

A I think so.

Q You also included another item of store rents collected, in the amount of \$3,500, the next-to-the-last item?

A That's right.

Q What was that store rent collection?

A I don't remember. It might have been from Massachusetts, during the period of the turnover, when the rents were sent down here.

Q Are you familiar enough with the files to give us a running account as I ask you questions, of the cash on hand and the various disbursements during the time of the curatorship?

A Approximately.

Q If I remember correctly, the receiver, Mr. Perlmutter, turned over to the curators the sum of \$11,050.99?

A That's correct.

Q What were the next items of cash that were received by the curators after that was turned over to them?

A I think I have a report I prepared for them. I would like to see if I can find it.

Q Fine.

MR. HUNT: Your Honor, may we have a statement from the House Managers about the testimony matter we discussed this morning?

MR. MUSSELMAN: If we could have a short recess, I believe we could confer with Justice Terrell.

CHIEF JUSTICE TERRELL: Do you want to recess right now?

MR. HUNT: No sir, we'll wait until we get through with this witness, Judge, if that's suitable.

CHIEF JUSTICE TERRELL: All right.

BY MR. MUSSELMAN:

Q Mr. Wasserman, in order to aid you, may I ask you this question:

They sold the boats, the boats were sold for \$7,250, according to your report. They received that next, did they not?

A I think so. I think they were collecting rents at the time too.

Q I want to know about the rents, but I also want to know about these various assets.

They sold another for \$29,500, is that not correct - - -

A Yes sir.

Q - - - the next one?

A Yes sir.

Q And how much rents were collected prior to October 21, 1954?

A October 21?

Q That's correct.

A 1954. They came into possession of the assets July 3.

I don't think there could have been much, if any, rents from the Florida property, because there's no question that rent was paid in some amount.

Q So there were approximately \$11,050, \$7,250 and \$29,500, less five per cent for a real estate broker in their possession on October 21, 1954. Is that an accurate statement?

A I would rather refer to my report, if I can find it, please.

Q Please do. I want this accurate.

A I think I have it here now, sir.

Q All right, sir.

A I prepared an accounting for June 29, 1954, to December 31, 1954.

Q From that accounting, can you tell us what the balance of funds was on October 21, 1954?

A Well, I think I would have to - - - oh, I see. I would have to compute it.

Q What was the balance, as shown on December 21 - - - or December 31?

A December 31; \$2,851.35.

Q Would you give me that again; twenty-eight hundred - - -

A \$2,851.35.

Q All right, sir. Can you tell us - - - can you compute rapidly what was the balance on October 21, 1954?

A Not rapidly. I don't know how rapidly.

October 21.

Q All right, sir, can you give us the answer to that?

A \$37,735.14.

Q On October 21, 1954, you have the figure of \$37 - - - what was the amount?

A \$37,735.14.

Q On that date, sir, fees totaling \$25,050 were awarded, leaving a balance of approximately \$12,000.

Where was the balance expended?

A I didn't hear you, sir. I'm sorry.

Q On that date, you gave us a figure of \$37,735.14?

A That's right.

Q Cash on hand?

A Yes, at the beginning of the day, yes.

Q And by December 31, the balance was \$2,851.35?

A Yes sir.

Q Now, aside from the expenditure for the fees, of \$25,050, where did the balance go?

A Well, there is an item here on November 30, of \$9,940.91, Ernest Overstreet, Tax Collector.

Q That was for taxes?

A There is an item here, the City of Miami Beach, taxes, \$6,231.79.

All the other items apparently consist of payments to one man, S. E. Heilman.

Q What were the amounts of payment to Mr. Heilman?

A I would have to add that.

Q Well, just list them quickly for us.

A All right.

November 23, Heilman, male nurse, \$200; the same day, Heilman, living costs, Mr. Dowling, \$150; November 26, Heilman, male nurse, \$140; December 3, \$140; December 3, living costs, \$114.33; December 10, \$140 and living costs of \$123.20; December 17, \$140, and living costs of \$97.63; December 23, \$120, and living costs of \$137.75; December 31, \$160, and costs of \$102.56; and the other - - - the only other payment was a telephone bill of \$41.09.

Q Those payments, with the exception of the telephone bill, were payments to Mr. Heilman for his services?

A Well, I think he held the spending money for Mrs. Dowling, and I imagine that's the living costs here referred to. I don't remember.

Q All right, sir. What was the income after December 31, when they had a balance of \$2,851.35? Specifically, can you draw a balance for us as of January 27, 1955?

A January 27, '55?

Q Right.

Is this going to take a great deal of time?

A It might. I have to - - -

Q What items of income were there between the first of January, 1955, and January 27, 1955?

A All right: Rent, David Allen, \$3,000 - - - that's January 5; January 10, rent, House & Garden, \$2,451.12; those are the only two items in January.

Q Those are the \$2,800 and the approximately \$6,000; that would be about \$8,800 in round figures - - -

A That's right.

Q - - - is that correct?

A That's right.

Q Now, when the Court entered its order awarding fees on January 27, 1955, there were insufficient funds on hand to pay those fees, were there not?

A Yes sir.

Q Well, when do your records indicate that the amount was finally found in the balance to pay the fees?

A On February 7, there was a sale of a ninety-nine-year lease, which brought in \$127,500.

On March 4, there was a sale of - - - I've got it as a sale; it was a collection of rent, of \$52,500.

Q That was the ninety-nine year lease?

A Fee simple title.

Q Fee simple title?

A That's right.

Q So, there were two major items of income, of \$127,500 and \$52,500?

A That's right.

Q What other items of income were there after January 27?

A Well, in February they got rent from House & Garden, of \$2,500, and from David Allen, \$3,000; and on March 7, House & Garden paid an excess of taxes of \$4,519.52.

On March 7, House & Garden paid rent in the sum of \$2,500; and on April 1, House & Garden paid rent of \$2,477.50; and that's all of the income between January 1 and May 31, 1955.

Q Sir, this may take a little time, but can you draw up a balance on hand as of March 9, 1955?

MR. HUNT: If Your Honor please, I don't object to his

using this witness all day, if counsel wants to do it, but we're only interrogating him about certain major reports here, and now, counsel, apparently, wants him to do some accounting work for his purposes, of drawing conclusions, and I think it's an objectionable question and line of questioning.

MR. MUSSELMAN: I believe, sir, we have a right to - - -

CHIEF JUSTICE TERRELL: Is this in cross of the direct examination?

MR. MUSSELMAN: I believe it is, Your Honor.

MR. HUNT: No sir.

MR. MUSSELMAN: They talked about rents being received and assets being sold.

I believe I'm entitled to discuss it.

MR. HUNT: The man introduced two or three reports which he has prepared. Now, counsel seeks, for other purposes, to have him do some auditing work with pen and pencil, to break them down as to certain dates. It's going to take a good part of the morning if we pursue this line of questioning.

MR. MUSSELMAN: Well, we think it's very important to the Senate, Your Honor, for them to hear it, this breakdown, in this fashion.

MR. HUNT: His reports speak for themselves. They're in evidence, Your Honor.

CHIEF JUSTICE TERRELL: Answer the question.

Answer the question, Mr. Wasserman.

THE WITNESS: It's going to take a little time.

What was the date you gave me?

BY MR. MUSSELMAN:

Q March 9, 1955.

MR. HUNT: If Your Honor please, to save the time of the Court, would it be reasonable to suggest that counsel furnish this witness with what dates he wishes balances brought to date, and let's excuse him and call someone else and let him work it out?

CHIEF JUSTICE TERRELL: Can you furnish the witness that information, Mr. Musselman?

MR. MUSSELMAN: Yes sir. I need several other figures.

I need a figure of June 9, 1955; I need the figure turned over to the Probate Court.

CHIEF JUSTICE TERRELL: You say you want those figures?

MR. MUSSELMAN: Yes sir, and I need the total amount of cash handled by the curators, actual cash, and where expended.

CHIEF JUSTICE TERRELL: Get up those figures, then, and return him at a later date? Is that - - - do I infer you to mean that?

MR. MUSSELMAN: If counsel's suggestion is followed, then we have no objection to that at all.

CHIEF JUSTICE TERRELL: Well, Mr. Wasserman, will you compile those figures and return to give the total on them later?

THE WITNESS: Yes sir.

MR. HUNT: Mr. Wasserman, did you hear - - -

THE WITNESS: I didn't hear the dates.

MR. HUNT:- - - the House Managers? Sir?

THE WITNESS: I was adding figures. I heard some dates, but I didn't - - -

MR. HUNT: Will you make a note of what he wants, now?

BY MR. MUSSELMAN:

Q Mr. Wasserman, I am interested in the balance of cash on hand at the time of the disbursement of these fees - - -

MR. HUNT: Well, give him the dates. He doesn't know the Court files, Mr. Musselman.

MR. MUSSELMAN: All right, I'm going to give him the dates, namely: March 9, 1955; June 9, 1955 - - -

CHIEF JUSTICE TERRELL: I suggest that you give him a memorandum of those dates, Mr. Musselman. I believe it will be more satisfactory.

MR. MUSSELMAN: All right, sir. I can confer with Mr. Wasserman; I guess that's the best thing to do.

Are we going to let him step down and bring him back later?

MR. HUNT: Suits me, yes. I think that would save time that way.

CHIEF JUSTICE TERRELL: Mr. Wasserman, I have a question here. Senator Connor, of the Court, sends up this question:

"If there was a question of income being insufficient to care for the living expenses of the Dowlings, how could the estate stand to pay curator fees and expenses of some \$90,000.00?"

THE WITNESS: I don't think I'm competent to pass on that.

I pass that. I merely put figures together, and the figures showed that there wasn't enough income to care for the Dowlings as the income situation stood at the time.

CHIEF JUSTICE TERRELL: The second question by Senator Connor, Mr. Wasserman:

"From the figures you compiled on December 31, 1954, did not the expense of curatorship completely eat up all rents, receipts, the \$7,200 for sale of boats and \$29,500 for the sale of the guest house, plus cash of \$9,500 from Klein, with the exception of \$2,800 you say was left in accounting?"

THE WITNESS: The expenses of the curatorship, which were approximately \$25,000 at that time, were the approximate equivalent of what was received from the sale of the residence, which was \$26,175.51.

Does that answer that one?

CHIEF JUSTICE TERRELL: Yes.

Is counsel all through with Mr. Wasserman?

MR. MUSSELMAN: We're going to - - - I'm going to confer with Mr. Wasserman.

CHIEF JUSTICE TERRELL: Well, you're excused for the present, Mr. Wasserman.

THE WITNESS: Thank you.

(Witness excused)

MR. MUSSELMAN: Mr. Hunt, would you like to at this time confer with the Court about this other matter that we discussed earlier this morning?

MR. HUNT: Whenever it pleases the Court to take a short adjournment, a short recess.

CHIEF JUSTICE TERRELL: Are you both ready?

MR. MUSSELMAN: Yes sir.

MR. HUNT: Yes, Your Honor.

CHIEF JUSTICE TERRELL: The Court will take a brief recess.

I'll meet you gentlemen in - - - if Senator Shands has no objection to it, I'll meet with you in his office, right back of this Chamber.

SENATOR SHANDS: No objection.

Whereupon, at 10:30 o'clock a.m., a short recess was taken.

CHIEF JUSTICE TERRELL: Order in Court.

The Chair declares a quorum present.

MR. HUNT: If Your Honor please, before the next witness

is called, I would like to present a short motion to the Court. I have it in writing, in accordance with the rules.

"The Respondent moves the Court to require the Managers of the House to produce and deliver to the Respondent all cancelled bank checks and income tax returns of the Respondent and his wife, which Respondent previously delivered to the House Investigating Committee, with the understanding and stipulation that said documents would be returned to Respondent after inspection by said Committee."

Now, in early June, I wrote the Attorney General about that matter. Mr. McLane, the Assistant Attorney General, under cover of June 21, 1957 - - -

MR. MUSSELMAN: May it please the Court, we're perfectly willing to do that immediately.

MR. HUNT: Well, it hasn't been so far, and Your Honor well knows that I've requested this verbally and in writing, and we still don't have the checks or the income tax returns of Judge and Mrs. Holt.

MR. MUSSELMAN: We're perfectly willing to do that at this time.

MR. HUNT: Your Honor, the gentleman said he was perfectly willing once before, but we still don't have them, and I would like to have the Court direct the Managers to return them.

CHIEF JUSTICE TERRELL: It is your purpose to present, or bring those checks to the Court, is that right, Mr. Musselman?

MR. MUSSELMAN: We'll send for them right away, Your Honor.

CHIEF JUSTICE TERRELL: How is that?

MR. MUSSELMAN: We'll send for them right now, if you like.

CHIEF JUSTICE TERRELL: Well, they will be in the Court presently, then?

MR. MUSSELMAN: I beg your pardon?

CHIEF JUSTICE TERRELL: I say, they'll be here presently?

MR. MUSSELMAN: Yes sir.

CHIEF JUSTICE TERRELL: Mr. Musselman, you have no objection to the motion, then?

MR. MUSSELMAN: No sir, none whatsoever.

CHIEF JUSTICE TERRELL: Since there's no objection to the motion, it's adopted and ordered that the cancelled checks and income tax returns shall be delivered.

All right, Mr. Hunt.

MR. HUNT: Your Honor, Circuit Judge Grady Crawford is here as a witness in connection with another phase, and because it is imperative that he return, with the Court's permission, while Mr. Wasserman is doing his pencil work, we would like to call Judge Crawford out of turn.

CHIEF JUSTICE TERRELL: Are you ready for Judge Crawford?

MR. HUNT: Yes sir, and may I say, for the benefit of the Court, that the testimony of this witness will have to do with the trip which Judge Crawford and Judge Holt and Mr. Joe Perkins and their respective wives took down to Haiti.

Thereupon,

GRADY L. CRAWFORD,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Grady L. Crawford.

Q Are you presently a Circuit Judge in the Eleventh Judicial Circuit of Florida?

A I am.

Q For what period of time have you been such Circuit Judge?

A I was appointed in January of 1951; was elected for a two-year term in 1952; and re-elected for a six-year term in 1954.

Q Were you opposed in 1954?

A No sir.

Q Judge Crawford, how long have you resided in Miami?

A Since June of 1939.

Q How long have you known Judge Holt and Mrs. Holt, approximately?

A Since - - - well, actually, after my return to Miami from service during World War II, I would say 1947 - - - '46 or '47.

Q Will you state, Judge Crawford, how long you've resided in Florida?

A I was born in Palatka, Florida, in 1915.

Q In Palatka, Florida?

A Yes.

Q What date?

A March 22, 1915.

Q And where did you attend school?

A I went to high school in Deland, Florida, and graduated from Stetson University, with a law degree, in June of 1939.

Q Now, have you known the Respondent, Judge Holt, professionally and socially for some period of time?

A Professionally, since 1946; socially, since about the time I went on the Bench, in 1951, I would say.

Q I believe you were in the Navy during World War II?

A Yes sir, from 1941 to 1946.

Q What organizations do you belong to in Miami, Judge Crawford?

A I am a member and past director of the Coral Gables Kiwanis Club; a vestryman of the St. Stephens Episcopal Church, in Coconut Grove; I am a Mason, thirty-second degree Mason; member of the Shrine; member of the Navy League; the Dade County, Florida, and American Bar Associations.

Q Judge Crawford, did you have occasion to attend the annual Jesters party on the night of December 20, 1955?

A Yes sir.

Q Did you or not see Judge Holt there on that occasion?

A I did not.

Q Have you been questioned about that at some length by the House Managers?

A Yes sir.

Q I'll ask you to state to the Senate whether or not you and your wife and Judge and Mrs. Holt and Mr. and Mrs. Joe Perkins had occasion to take a trip together some years ago?

A Yes sir, in August of 1953.

Q Would you mind, Judge, in your own language, and without further interruption, stating how the idea of that trip generated, and if anyone else was originally to be included on it, and just how it developed, what transpired, and how it ended, if you will?

A All right, sir.

Q I think you've had occasion to state it several times before?

A Yes sir, I have.

During World War II, for a period of about a year, I was on a ship in the Caribbean and South Atlantic, and we called at many of the islands in the Caribbean, and I had some interest in the area.

After my return to Miami, and into practice, I became friendly with Joe Perkins and Jeph Marchant. Actually, in the 1949 political campaign, I first became friendly with them.

Mr. Perkins was a personal friend of mine. I visited in his home, and he visited in mine. We lived within a mile of each other in the southwest section of Miami.

Q Would you pull that mike a bit closer, Judge?

A Yes sir.

Q That's all right, that's good.

A Sometime in 1953, to the best of my recollection, Perkins undertook to represent as a client Paul Weesner, and as part of that representation, he assisted him legally in completing the purchase of a hotel in Haiti.

Mr. Perkins made several trips to Haiti in connection with this purchase, and we discussed that at meetings, with visits between us, and he was quite interested in the island, and I was interested in the area from my trips there, although I had never been to Haiti.

And at some time during this period, we decided that we would plan a vacation in Haiti, and this was kicked around back and forth for quite a length of time and with quite a few people.

It finally resulted in Mr. and Mrs. Perkins, Judge and Mrs. Holt, and Mrs. Crawford and myself leaving for Haiti on August 3, 1953.

The plans for the trip were primarily made by myself, with Mr. Perkins, and Judge Holt was not originally included in the trip. We had from time to time discussed the thing with different people, as you would at social gatherings, and a number of people - - I say "a number" - - two or three different couples had, at some time or another, considered going with us, but we wound up with Judge Holt, Mr. Perkins and my wife and myself making the trip.

Generally, that's the outline we - - -

Q Now, will you state how the matter of ticket purchase was handled, and what transpired in that connection?

A At first we planned to fly directly from Miami to Haiti, and then return to Miami, but in casting around and finding out about the various tours and things, I learned that for a slight additional transportation charge, you could fly from Miami to Haiti, and instead of returning direct, you could go from there to the Virgin Islands and Puerto Rico, and then return to Miami. Actually, the additional transportation charge was twenty dollars a person to include those trips and make the circle route back, rather than come back directly.

The tickets were purchased - - - at that time the transportation tax on traveling was twenty per cent. If the round trip tickets are purchased at the place of destination, rather than place of origin, you save the twenty per cent tax.

The tickets were - - - the purchase of the tickets was arranged by Mr. Perkins, in Haiti. The six tickets were given to me by Mr. Perkins at least two or three weeks before our departure date, and I took them to Pan American's office, on Flagler Street, and had them reroute us, and paid the additional charge, and the tickets were in my possession from that time until the morning we left, to the best of my recollection.

The money for the tickets, Judge Holt and Mrs. Holt's money, was either given to me and handed to Mr. Perkins, or given directly to Mr. Perkins; I can't, for the life of me, recall; and our money was - - - for our two tickets was given to Mr. Perkins either the morning or the day before we actually left on the trip.

I wrote to the Virgin Isle Hotel in St. Thomas, and made the reservation there. I selected the hotel and made the reservation because I had been there; and I also wrote to the hotel in San Juan, Puerto Rico. I selected that hotel, the Carib Hilton; I wrote and made reservations for the entire party. Mr.

Perkins made the reservations at the Hotel Riviera de Haiti, in Port au Prince, Haiti.

We - - - it was a vacation trip; it had been planned for some months; and that's all there was.

Q Judge, you first went to Haiti, did you?

A We flew from Miami to Port au Prince, Haiti, and got there about noon, or one o'clock.

We stayed in - - - that was Monday - - - no, that was Tuesday, August 4; we stayed there Tuesday night and Wednesday night. Thursday, we flew to Cap Haitien - - - that's on the island - - - that's about a thirty-minute flight - - - with the Haitian Air - - - in a Haitian Air Force plane, and stayed there overnight; back Friday afternoon to Port au Prince; stayed there Saturday, and left Sunday.

Q For Miami?

A No sir, for San Juan, Puerto Rico.

We stayed there overnight. Monday we flew to St. Thomas, Virgin Islands; stayed there Wednesday - - - I believe until Thursday morning; back to San Juan until Saturday, and back to Miami Saturday morning.

Now, I may be a day or so off, one way or the other, but that, to the best of my recollection, is it.

Q Judge, would you state to the Senate what practice, if any, was followed in the matter of paying the charges for the various hotel and other services which you required throughout this trip, as regards whether or not the charges, the costs, were divided, or paid by one person, or how were they handled?

A Well, generally, everybody paid for their own charges.

Now, in Haiti, we - - - this was in August. It was right in the middle of the summer, and we got - - - we knew what the room rates were. We got the bar bill, and some other bills in Haiti, and we estimated that and settled - - - we would settle these things, generally, every day or so.

For example, if we went out to dinner, one night I would pick up the check; the next night, Judge Holt would pick up the check; then Perkins. We didn't sit down and have a penny-by-penny itemized accounting, but generally, everybody paid their own way.

Q Throughout the trip?

A Yes sir. I paid - - - I cashed travelers checks in all three places, and I remember paying the bill for not only myself, but for Mr. Perkins, in the Virgin Islands, and then, when we got back to San Juan, we adjusted it there between ourselves. It was - - - it wasn't any accounting procedure, it was a - - - we just - - - it was a casual accounting, so that each party, each couple, stood their own expenses, and that was the understanding throughout.

Q Was there any contrary understanding as to Judge and Mrs. Holt?

A No. They paid their way and went just as we did.

Q Well, after your return to Miami, do you recall whether or not there was a small balance due you by Judge and Mrs. Holt?

A No sir, the only balance that I recall was that we sent some purchases back air freight, and I picked those up at the airport, and we adjusted that, a few dollars; that's the only adjustment that I recall after we got back to Miami.

Q Now, at the hotel in Haiti, there's been some testimony that your party was accorded V. I. P. treatment, which was supposed to have consisted of certain entertainment, or courtesy features.

Were you aware of the V. I. P. treatment, and if so, what did it consist of?

A I knew, of course, that Mr. Weesner owned, or had some interest in the hotel, and that Mr. Perkins represented him, and we - - - they were - - - we were treated very nice.

The V. I. P. treatment that I could - - - that I can think of, I would hardly know what to say. You have to - - - this was in 1953. This was a small hotel; I think it only had fifty rooms; and it was not air conditioned.

The water, the drinking water, could not be used; they had bottled drinking water on each floor. It was one of the better hotels there, but it was certainly no luxury hotel, compared to Miami Beach.

Q Were there flowers in the rooms?

A Yes, and fruit, and the manager - - - they were - - - they were just very nice to us. They took care of our laundry when we flew to Cap Haitien, and they treated us as nice as anyone could be treated.

Q Were you aware of any diminution in price at that hotel?

A No sir. I made arrangements with a hotel in San Juan, and in the Virgin Islands. Mr. Perkins took care of the hotel arrangements in Haiti; and to the best of my knowledge, we adjusted and paid everything that was charged, and we were charged according to the going rate at that time.

Q There has been some testimony that prior to the trip, a law suit in which Mr. Weesner had an interest, fell in Judge Holt's division. Were you at any time made aware of that fact on the trip?

A No sir. I never heard of the law suit until some months after I returned. There was no mention on the trip of any law suit.

Mr. Weesner was not along; there was no discussion of Mr. Weesner; there was no discussion of legal business. This was purely and simply a vacation trip, a junket with three - - - between three friends. That's the way it was formulated in the beginning, and that's the way it ended, and I never heard of the suit until months after we got back, some months.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. JOHNSON:

Q Judge Crawford, I may have misunderstood you, but when you first - - - in your testimony, you said August of '52. That should be August of '53, should it not, that the trip began?

A August 4, 1953, that's right, four years ago.

Q Now, Judge Hunt asked you about this law suit. That was the law suit in which Mr. Weesner was attempting to prevail, concerning a matter of \$81,000, is that right?

A The Eagle Star law suit is the one I - - -

Q Mr. Weesner was a party - - -

MR. HUNT: Counsel knows what it is.

MR. JOHNSON: May I examine the witness, Mr. Hunt?

THE WITNESS: That's right, that's the one I'm referring to.

MR. HUNT: I object to counsel testifying.

MR. JOHNSON: Well, this is cross examination, if I may be permitted to ask my questions.

That was the same Mr. Weesner who arranged for the purchase of the tickets at the twenty per cent saving, is that correct?

THE WITNESS: Well, I don't know if Mr. Weesner arranged for the purchase, but it was arranged through the hotel in Haiti, and that is the same Mr. Weesner that had an interest in the hotel, yes sir.

BY MR. JOHNSON:

Q Arranged at his direction?

A I would assume so, yes sir.

Q And he also arranged for this - - - what Judge Hunt referred to as "V. I. P. treatment" of your party at the hotel in Haiti?

A Yes sir.

Q Did you ever have any accounting with Mr. Perkins after you returned to Miami, concerning the expenses of the trip?

A Not that I can recall. The only accounting I can recall after we returned to Miami was the accounting that we made for the freight charges, which was a few dollars; that's the only accounting I recall.

Q Mr. Perkins never stated to you that you had overpaid him a little bit, and wanted to return a portion to you?

A Not that I recall, no sir.

Q Do you know when it was that he finally adjusted his account with the hotel in Haiti?

A I don't know anything about that.

Q You had no personal knowledge of that?

A None at all.

Q Judge Crawford, is it true that at one time after the trip, you believed that the rooms furnished to you at the Hotel Riviera de Haiti, owned by Mr. Weesner, had been furnished to you and your party complimentary?

A On the occasion that I testified before the Florida Bar Examiners, I stated that I did not know whether Mr. Weesner had comped us for the rooms or not.

The reason for that was this: Mr. Perkins made the arrangements and the reservations at the hotel, and we had settled the account with him, and I didn't know whether Weesner had actually comped us for the rooms or not. I remembered that we paid a bill, but I didn't know at that time, didn't recollect, all of the details of the matter.

Q Well, wasn't it your impression, at the time you testified before the Florida Bar, that Mr. Weesner had comped you for the rooms?

A No sir, I just - - - I did not recall.

I remembered paying a bill there, but these hotels, and that one, as well, are operated on a flat daily rate, which includes your rooms and your meals, and when you get your bill, it includes everything in the hotel except the bar bill, which is separate.

Q Do you recall, at that hearing, testifying that when Weesner heard about your plans, he offered to fly you down in Resort Air Lines?

A I don't recall exactly that. I know we discussed at one time flying down in Resort Air Lines, in which Weesner had, or had had an interest, but for one reason, none of us particularly cared to fly with Resort. I preferred to fly Pan American, and that's the way we flew.

Q In order to refresh your memory concerning that particular matter, do you recall testifying in these words at the Bar hearing, which occurred on June 2, 1956, before the agents of the Board of Florida Governors, who met at the Robert Clay Hotel, these words - - -

MR. HUNT: If Your Honor please, this is just for the purpose of the record, not that I have any professional objection, but counsel is about to read from records of the Bar hearing.

MR. JOHNSON: This is merely for the purpose of refreshing Judge Crawford's memory.

MR. HUNT: Merely for the purpose of anything, Your Honor, he's about to disclose testimony taken before the Florida Bar.

CHIEF JUSTICE TERRELL: Don't try to read anything from the testimony that was taken, Mr. Johnson.

You can question him, refresh his memory, but not something that's been - - - hasn't that evidence been discarded?

MR. JOHNSON: No sir. This is evidence that has never been ruled on by the Court.

Now, Judge Crawford has testified as to his recollection about this matter here, and I want the opportunity to refresh him by reading him his exact words which he gave previously, at a hearing on June 6 - - -

CHIEF JUSTICE TERRELL: Answer the question.

MR. JOHNSON: - - - I mean June 2, 1956.

CHIEF JUSTICE TERRELL: Answer the question, Judge Crawford.

THE WITNESS: Will you give me the question?

BY MR. JOHNSON:

Q Did - - - here is the question.

Did you testify in these words:

"We stayed at the Hotel Riviera de Haiti, which is Weesner's hotel. I do not know whether he owns it or not, but he had a big share in it.

"When Weesner heard about the plans, he offered to fly us down in Resort Air Lines, which he also owned, and I refused to go.

"Frankly, the moral question did not occur to me at that time, but I just did not trust flying with Resort Air Lines, and I insisted we go by Pan American, and we handled it that way."

A That's exactly right.

There was no moral question until months later, when this suit was brought to my attention, and it then became a problem.

Q Yes sir.

In other words, you did not know about the suit at the time this discussion concerning flying with him came up, did you?

A No sir, and I would - - - no sir.

MR. JOHNSON: Thank you. That's all we have.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Judge, to your knowledge, did Judge and Mrs. Holt pay their full share of each and every charge on the trip?

A Yes sir.

Q And you and Mrs. Crawford did the same?

A We did.

Q Did Judge Holt, to your recollection, pick up a check at any one of these three places?

A Yes sir. For example, we went to the casino in Port au Prince, and one of us paid the check. I don't know, I've forgotten which one.

We went out in Puerto Rico to dinner, away from the hotel, and somebody paid the check. Generally, we rotated, and we kept pretty close tabs on each other.

We weren't on any unlimited budget. Most of us were being conservative, and each of us paid, roughly, their own way, as adjusted between ourselves.

One dinner check might be a dollar more than another, but there was no point made of that.

Q Nor was there any occasion for either party to attempt to profit on the other one?

MR. JOHNSON: I object to the question as being leading and argumentative.

MR. HUNT: I think it is too, Your Honor, and I'll withdraw it, if Mr. Johnson will permit me.

BY MR. HUNT:

Q Judge Crawford, since the action of the House of Representatives in this matter, has there been a reorganization of the Circuit Court of the Eleventh Circuit, pursuant to new Constitutional amendments, under which another Judge has been selected to be Senior Judge, or the head of the Court?

A There has.

Q Who is now the Senior Judge?

A Judge Marshall C. Wiseheart, acting under the new rules for the Circuit Court, just promulgated by the Supreme Court of Florida, effective July 1.

Q Is he called, under the new rules, "Senior" or "Chief" Judge, do you recall?

A I do not recall.

Q And he will serve in that position, under the new rules, for what period of time?

A Two years.

Q And then what develops?

A It's - - - under the rules, as I recall, it's elective by a majority of the Judges in the circuit.

MR. HUNT: That's all. Thank you very much.

MR. JOHNSON: That's all we have.

We have no objection to him being excused, Your Honor.

MR. HUNT: Thank you, Judge.

(Witness excused.)

MR. HUNT: Have you finished up with - - -

MR. MUSSELMAN: Mr. Wasserman?

MR. HUNT: Yes.

MR. MUSSELMAN: Yes.

MR. JOHNSON: If the Court please, I understand from counsel that they're now going back to the Dowling case. Is that correct, Judge Hunt?

MR. HUNT: We never have left the Dowling case except momentarily, to accommodate this Circuit Judge.

MR. JOHNSON: If the Court please, I understand that one of the witnesses who has previously testified in the Dowling case is now in the galleries, and we have no objection to him being excused to go home, subject to call, but if further testimony is going to be given concerning the Dowling case, possibly something might come up where we would have to recall Mr. Wright, who is now in the galleries, and we would suggest that he not be permitted to remain in the Senate Chamber, but we have no objection to him returning home, subject to recall, if we need him.

CHIEF JUSTICE TERRELL: If Mr. Wright is in the gallery, I suggest that he return to Room 31.

MR. HUNT: Now, if Your Honor please, Mr. Wright has been excused and paid off and discharged as a witness, as have some fifty or sixty others.

CHIEF JUSTICE TERRELL: You're through with him, then?

MR. HUNT: Yes sir. He's been discharged, and I think it's improper to single out Mr. Wright for that objection.

MR. JOHNSON: We have - - -

MR. HUNT: A number of the witnesses have taken seats in the gallery after they've been paid off and discharged, and I see no reason to single out Mr. Wright for application of the Prosecution heel.

CHIEF JUSTICE TERRELL: It appears that Mr. Wright has been finished with by attorneys on both sides; so, Mr. Wright is excused for the term.

MR. HUNT: Yes sir.

MR. JOHNSON: As I understand it, if Your Honor please, they have not finished with the phase of the case Mr. Wright testified concerning, and it's possible that his testimony might require us to recall him.

We had not agreed that he be excused.

MR. HUNT: Now, that is not correct, if Your Honor please.

Mr. Wright has been properly excused; the records will reflect it. Counsel's statement is incorrect.

MR. JOHNSON: We have not excused him since you have placed him on the stand, Judge Hunt, and I don't believe you have consulted with us concerning releasing him since you have placed him on the stand.

MR. HUNT: Mr. Manager - - -

MR. JOHNSON: That is my understanding, that - - -

CHIEF JUSTICE TERRELL: You say you are not through with him?

MR. JOHNSON: They are not through with the Dowling case, and since he testified in the Dowling case, it may require us to recall him. I don't know what they're going to do, if Your Honor please.

If you're through with the Dowling case, we have no objection to him being excused.

MR. HUNT: Counsel is trying to read our mind. We are through with Mr. Wright; we have excused him, and he does intend to go home, but I don't intend for opposing counsel to tell my witnesses where they can sit, or when they have to go home.

CHIEF JUSTICE TERRELL: Are you through with Mr. Wright?

MR. JOHNSON: We don't know, sir, until they finish the Dowling case.

MR. HUNT: Well, then, I'll ask that they put him under subpoena, if they want to deprive him of - - -

CHIEF JUSTICE TERRELL: If you want Mr. Wright, why, put him under the rule and let him go back in Room 31 - - - if you're not through with him, let him go back in Room 31, under the rules.

MR. JOHNSON: Well, we would prefer that he not be in the Senate during the testimony about the Dowling case, if Your Honor please.

MR. HUNT: Well, I'll ask for the same privilege as to any witness called by the Prosecution, whether he's excused or not.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will see that Mr. Wright returns to Room 31.

SENATOR SHANDS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: - - - I'd like to call to the attention of the Court that Mr. Wright was paid off this morning, on the order signed by Mr. Summers, counsel for the Respondent.

CHIEF JUSTICE TERRELL: You say Mr. Wright was discharged this morning?

SENATOR SHANDS: Discharged, yes, and I have the order from Mr. Summers, and he was paid this morning.

MR. SUMMERS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Mr. Summers.

MR. SUMMERS: - - - I'd like to say that when we had the pre-trial conference, at the beginning of this trial, we asked these gentlemen if they would agree that no witness be excused until it was agreeable to both sides. They refused to agree to that.

They called Mr. Wright as a witness, put him on the stand, excused him, and they have done that all through this trial; and they were the ones that refused to agree that witnesses would not be released until both sides agreed to it. They said if we wanted Mr. Wright, we could subpoena him, subpoena Mr. Wright. Now, they're in the same position. We, having discharged him, if they want him back, they should subpoena him again.

MR. JOHNSON: If Your Honor please, we don't want to be oppressive to anyone. The only point we're making is that if they're going to testify about the Dowling case, since he was a witness in the Dowling case, we would prefer that he not be in the Chamber. We don't care where he goes, just so he doesn't sit here listening to the testimony, since he may possibly be recalled.

MR. SUMMERS: Mr. Chief Justice, I'd like to add one other thing:

I didn't hear any objection to Mr. Wright being in the gal-

lery when they called him up here and excused him, or any of these other witnesses.

SENATOR BRACKIN: Mr. Chief Justice, I've noticed a number of witnesses sitting in the gallery from time to time, and witnesses that were called here by the Defense, and I didn't see any objection raised to that, for instance - - - by the Prosecution, I mean.

For instance, the two witnesses that worked in the filling station; I saw them in the galleries.

CHIEF JUSTICE TERRELL: Well, I think we're wasting a lot of time on this for no account, and I repeat that if Mr. Wright is to be used further as a witness by you gentlemen here, that the Sergeant-at-Arms see that he goes to Room 31.

SENATOR STENSTROM: Mr. Chief Justice, sir, in order to get something before the Court in a proper way, I move you, sir, that all witnesses that testify in this trial, that have been excused by the House Managers and the Defense counsel, be permitted to sit in the balcony.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: You've heard the motion, gentlemen. All in favor of it, let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

MR. HUNT: Will the Sergeant-at-Arms please advise Mr. Wright he can return to his seat?

Thank you, sir.

MR. MUSSELMAN: Mr. Wasserman.

Mr. Wasserman, please take the stand, sir.
Thereupon,

SIDNEY WASSERMAN,

a witness previously duly called and sworn for and in behalf of the Respondent, was recalled and testified further as follows:

CROSS EXAMINATION (Continued)

BY MR. MUSSELMAN:

Q I believe, sir, Mr. Wasserman, that you are under cross examination, that was relative to bringing a balance down on certain dates, and I believe also that you had already - - - or you had not - - - will you give us the balance in the books on the curators' accounts, of cash on January 27, 1955?

A That balance was \$6,274.01.

Q I'm sorry. Will you give me that again, sir?

A \$6,274.01.

Q What was the balance, as contained in the curators' account on March 9, 1955?

A \$145,354.07.

Q Now, in arriving at that figure, Mr. Wasserman, did you take into account the funds expended on the house, for refurbishing the house, in the amount of \$45,000?

A I didn't look. I can't tell you unless I take a look.

Q Take a look at what I have here.

A That's right.

Q Was that the balance after the funds were spent on the house, or before?

A After some of the funds, but not as to all of them.

Q Not all of them?

A No.

Q All right, sir. Did you take into account the amount of fees awarded to the curators on March 9, of some \$30,000.

A No sir.

Q You did not take that into account?

A No sir.

Q Were you able to arrive at a balance in the account on June 9?

A No sir, I don't have the accounting from May 31 to the end of the year. I think I prepared such an accounting, but it isn't in my files - - -

Q You don't happen to have it with you?

A I don't have it with me.

Q Can you tell me the balance of funds turned over by the curators to the Probate Court?

A No sir, I never got to that part.

Q Can you tell me the total amount of cash actually handled by the curators during the curatorship?

A I'm sorry, I can't. I don't have the complete file, and I didn't prepare it.

Q Then, of course, it follows that you cannot tell us the balance or the expenditures of the curators during that same period?

A That's right, I can't.

Q Referring back, sir, to the letter which you wrote Mr. Hunt, do you happen to know - - - strike that question.

Referring back to your statement to Mr. Hunt, on June 22, 1956, you do not attempt, by that statement, to show a net worth figure of the estate, do you?

A Oh, no sir.

Q What was the purpose of the statement?

A The purpose of the statement was to show the total funds that had come in - - - total funds, the total value that had come into the hands of the curators during this period.

Q Everything that had come into their hands?

A That's right.

MR. MUSSELMAN: I believe that's all.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Mr. Wasserman, when Mr. Perlmutter was relieved as temporary receiver, and the curators were appointed, did the curators continue your accounting services in the matter?

A Yes sir, but sporadically. They - - -

Q Pardon?

A They continued my services, but not on the same basis.

For Mr. Perlmutter, I wrote out his checks and handled each disbursement, banked the receipts.

The curators did that themselves, but I prepared an accounting for them when I was called on to do so.

Q I see. And you still have that connection with the curators when they need a report in this matter? They're still using your services, I mean?

A They haven't for some time now, but I think they still use my services.

Q I'll ask you to state whether or not, up to the time that you had occasion to prepare the last report, or accounting, had the curators properly accounted for the income and the disbursements in the estate matter?

A Yes sir.

MR. HUNT: No further questions.

MR. MUSSELMAN: That's all.

So that there can be no mistake, we are willing for this witness to be released.

MR. HUNT: There never was a mistake.

Thank you.

(Witness excused)

MR. HUNT: Will you call Judge Prunty, please?

Thereupon,

JOHN W. PRUNTY,

a witness previously called and duly sworn for and in behalf of the Respondent, was recalled and testified further as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Judge Prunty, I believe you have previously testified before the Senate, have you?

A I have.

Q Were you appointed as co-curator of the estate of Jewell Alvin Dowling - - -

A I was.

Q - - - by Circuit Judge George E. Holt?

A I was.

Q Do you recall the date of the order of your appointment?

A The 22nd of June, 1954.

Q You'll have to pull that microphone up a little bit, Judge.

When was it?

A The 22nd of June, 1954.

Q At the time of the entry of the order, were you in Miami?

A No sir.

Q When did you return to Miami?

A About a week later.

Q When, and in what manner were you notified of your appointment as co-curator?

A By telephone and by mail.

Q Where were you at the time, Judge?

A Quebec City, Canada.

Q Pardon?

A Quebec City, Canada.

Q Were you there on business, or vacation, or what?

A It was part business and vacation.

Q Who notified you of the appointment?

A Mr. Heller.

Q Did Mr. Heller, by mail, send you a copy of the order?

A He did.

Q What did you do in connection with your appointment during your absence?

A Filled out the bond form and the oaths form, and returned those to the Clerk.

Q Were you, thereafter, in touch with anyone in connection with the matter?

A I had several telephone conversations with Mr. Heller, principally, with reference to some boats, or ships, that, it was indicated, should be disposed of.

Q And did you approve of the efforts which were made to dispose of the boats?

A I did.

Q Did Judge Holt, shortly after the order of appointment,

enter an order providing that in the event of the absence of either one of the curators, the other, in emergency, could carry on?

A He did.

Q Now, approximately when did you return to Miami?

A About the 29th of June, about that time; approximately a week after the order, is my recollection.

Q Well, now, upon your return, I wish you would state to the Senate what you proceeded to do as a result of your having been appointed as co-curator?

A Well, I asked to see the file and reviewed the file. I was totally unfamiliar with the Dowling case; I had never heard of it before.

I went with Mr. Heller to the house at 1100 Bay Drive. A complete inventory was taken; we made an inspection of the boats; took steps for their disposal; and took general charge of the properties and the affairs of the estate of Mr. Dowling; filed an oath; filed a bond; received the assets from the then and discharged receiver.

Q Now, following that preliminary operation, Judge Prunty, what, if anything, did you do with respect to visiting the Dowling residence and conversing with Mr. Dowling?

A My recollection is that I saw Mr. Dowling only once or twice at that time, because shortly thereafter, they left for Massachusetts, and remained there until sometime in November of 1954, but we did make an inventory of the - - - what was referred to as the guest house, inspected that property, as well as the other property, 1120 Bay Drive.

Q Now, when did the Dowlings return from Massachusetts that summer?

A In November of 1954.

Q I note an order of 19 - - - to employ - - -

SENATOR DAVIS: Mr. Chief Justice, we want to hear Judge Hunt and Judge Prunty over here, but we can't hear the questions.

MR. HUNT: Yes sir.

CHIEF JUSTICE TERRELL: Will you speak in the microphone, Mr. Hunt, and Judge Prunty, both of you?

MR. HUNT: Yes sir.

BY MR. HUNT:

Q Do you recall who drove the Dowlings back to Miami?

A A man by the name of Heilman, Sam Heilman, who was their employee.

Q Who had employed Heilman for the Dowlings, do you know?

A The Massachusetts conservator.

Q What was his name?

A Mr. Robert Meserve.

Q What experience and contact did you have with Mr. Heilman?

A Well, none until he arrived in Florida, and sometime shortly after his arrival, in December, we were receiving reports that his activities were not all that they should be, and that he was not taking care of the wards, and he was not paying attention to his duties, and the fact that he was mistreating them, leaving them by themselves on some occasions, and that his conduct was offensive.

Q Do you know where those reports came from?

A Yes, those reports came from the neighbors and from the Dowlings themselves.

Q Now, what did the curators do, with respect to checking into the Heilman situation, to determine whether or not Mr. and Mrs. Dowling were being properly cared for?

A Made a number of visits to the house and consulted with the Dowling people and tried to observe his activities;

consulted with the neighbors; we consulted with the Massachusetts people, and our conclusion was that he was not acting properly.

Q Did you, during that time, have occasion to converse with Mr. Dowling at any length over at the residence place?

A Yes, I did, on several occasions; and when you say "converse," usually, you did the listening and he did the talking. He took charge of things.

Q Mr. Dowling did the talking?

A He did the talking; he took charge of things. His conversation was somewhat incoherent and rambling.

Q Did it vary from day to day, as to coherence?

A Some days he was brighter than other days. I did learn that generally, he had inherited a great deal of money from his family, his father, had been able to preserve that through the years and add to it, and had been a man of substantial wealth and means all his life, and had enjoyed many luxuries of life.

He had made a number of trips to Europe, and he discussed those trips from time to time. Some of his business activities, he discussed.

He was quite upset over certain people in Massachusetts, that he felt he had confidence in in the years past, and that confidence had been destroyed. He felt that they were his enemies, and responsible, somewhat, for his present condition.

Q Did he name those Massachusetts persons?

A Yes. One of them was a Miss or Mrs. Grace Donlin, who had been a private secretary of his.

Another was George Gilman.

Q Well, did Mrs. Grace Donlin - - - wasn't she one of the witnesses at his hearing before Judge Holt for the appointment of the curators, or do you recall?

A I was not present at that hearing, and I don't recall.

Q Did you ever meet Mrs. Grace Donlin?

A I never met Mrs. Grace Donlin.

Q Well, then, your information as to her came from Mr. Dowling?

A Came from Mr. Dowling.

Q And - - -

A Another was Mr. George Gilman, a banker there.

Q And did he particularly attribute any Massachusetts losses or reverses to those people?

A Yes, he felt that they had stimulated the action which had resulted in his being declared incompetent.

Q By that, you mean the filing of a petition by Mrs. Dowling - - -

A That's correct, filing of a petition - - -

Q - - - for adjudication as an incompetent?

A By Mrs. Dowling, for his adjudication as an incompetent.

Also, he was disturbed about the condition of a lease that he had made with the Jordan Marsh people in that area, and felt that someone had taken advantage of him, and it wasn't to his business liking, and he was blaming these people partially for it.

Q Did he state who had negotiated that lease and gotten him into that situation?

A I think he referred to Mr. Gilman and some of the lawyers in Massachusetts as the people who had been responsible for - - -

Q Judge Prunty - - -

A - - - that situation.

Q - - - did he seem to be aware that that lease had resulted in a considerable diminished annual income to him?

A Yes, he spoke of that frequently, and worried about it, and he had borrowed some money to finance some of his properties up there. He was concerned about that situation.

Q Did he tell you from whom he had borrowed the money?

A I think the Malden Trust Company was one, and some other bank up there.

Q Did he tell you whether or not this man, Meserve, or whatever the other one - - - Gilman, was connected with the Malden Trust Company?

A I understand that Mr. Gilman was connected with the Malden Trust Company, or some bank up there with which he had financial dealings, and which affected his property.

Q What was Mr. Dowling's personal condition, and the condition of the house about the time that Mr. Heilman was done away with, so to speak?

A It was a very deplorable condition, actually; and the house had very little furniture in it, and what furniture it contained was old, dilapidated and stained and abused and misused.

Mr. Dowling was an invalid, in that he had suffered three strokes: I think one in '38, according to his medical history, '46, and the last one in '52, and his entire - - - I think it was his right side that was paralyzed.

He was unable to do certain personal functions. He couldn't control his bladder, for instance, and had to have almost constant attention and someone there with him to look after him and take care of him.

Q Did you - - -

A The house was in bad state of repair, both inside and out. It looked like a deserted, haunted house. It was a very miserable sort of place.

Q Returning for a moment to the Massachusetts situation, can you state whether or not Mr. Dowling stated anything about Mr. Gilman's bank having a mortgage on the Malden property at the time he caused the fifty-year lease to be placed on it? Do you recall that?

A That's my recollection; and his complaint was that the man who was the banker that had the mortgage and had negotiated that mortgage, and he also had something to do with the lease, and he felt that he had been misled, or his confidence had been betrayed, and that - - - the thing that he blamed them for greatest was that they had been instrumental in having Mrs. Dowling institute the petition for his incompetency.

Q That's the same people who had negotiated the lease - - -

A Yes.

Q - - - which he complained of?

A As he would state, they were trying to steal all his property.

Q Now, then, at the time it was discovered that Mr. Heilman had procured a signed general power of attorney from Mrs. Dowling, do you know how that information came into the possession of yourself or your co-curator?

A Mr. Heller advised me of it.

Apparently, Mr. Heilman had advised Mr. Heller that he had such a power of attorney, and asked him to review it as to completeness and as authority for his ability to dispose of the assets - - - and they were mostly liquid assets - - - of Mrs. Dowling.

Q He went to Heller to find out what all he could do under that power of attorney?

A Yes, he did.

Q Did you - - - were you present when the matter was discussed with Mrs. Dowling?

A With Mrs. Dowling?

Q Yes.

A Yes, Mrs. Dowling, who was a very shy, mousy old lady, and who had been dominated, apparently, all her life by her husband, was quite upset and quite distressed and disturbed, and said that she was in fear of this man, Heilman, and didn't recall having given him a power of attorney, or couldn't recollect having given him any authority, and was upset because he had some of her dividend checks that he had not delivered to her.

Q Do you recall, or were you present when the Heilman matter was brought before the Court?

A With reference to the power of attorney?

Q Yes.

A Yes.

Q Was Mrs. Dowling's signature exhibited to her on that power of attorney?

A Yes, it was.

Q Did she recall having signed it?

A She did not recall having signed it; said it appeared to be her signature, but she did not recall having signed it.

Q Now, Judge Prunty, rather than traveling over the fifty-odd - - - fifty-seven various orders - - - we've been over those once - - - I'll ask you to state to the Senate, generally, how the working of this matter was divided, as between yourself and Mr. Heller?

A Mr. Heller, being somewhat younger and newer in practice than I, I, rightly or wrongly, regarded myself as the senior member of the curators, almost as you would regard a law firm, and I permitted Mr. Heller to do a good bit of leg work.

For instance, if we needed a file or files from the Court House, I'd ask him to get it for me; and if we had some special errand to the Dowling house, or to see them, I would occasionally ask him to do that, and sometimes I would accompany him, sometimes I would not.

It was a little more convenient for him to go by the Dowling house than it was for me; he lived in that vicinity.

So that we operated on that basis, and usually, with reference to any petitions to be drawn, orders, or policies to be set, decisions to be made, he met me in my office; we sat down and discussed them at length, and very frequently, work them out in longhand, or I would have my girl work them out in a rough draft and then ask him to put them in final form. He would then take them to his office, which was about a block away, in another building, put them in final form, and then he would return, and if we were satisfied with the final product, why, we then presented it to the Court, or took whatever steps might be indicated from that particular phase of the case.

Q Now, about the time it was determined that this Heilman had this general power of attorney from Mrs. Dowling, was there any information with respect to some \$20,000 worth of her securities having been sold upon Heilman's order?

A Yes, we became concerned and alarmed about the power of attorney, because of its broad features. It seemed to give him quite carte blanche authority to dispose of any of her assets, and we were aware that she had upwards of \$300,000 or \$400,000 of liquid assets, apparently in the hands of a stock broker, and we learned that Heilman had already set in motion the means, through the Power of Attorney, of liquidating \$20,000 worth of the securities, and that was without consulting us, without our knowledge or consent, without our having anything to do with it.

He had no purpose or need for a liquidation of \$20,000 at that particular time in his hands, and we immediately took steps to try to prevent its being dissipated.

Q Well, were you able to prevent the delivery of the actual dollars resulting in the sale of the \$20,000 in securities to Heilman?

A Yes, we were, we were.

Q You contacted the Massachusetts broker?

A We contacted the Massachusetts conservator, the Massa-

chusetts broker, and the Post Office Department, and through that combination, were able to prevent the actual check, or the funds from falling into his hands.

Q But the securities had been sold on his order?

A They had been sold on his order.

Q Now, about the time the Heilman power of attorney and the general unsatisfactory condition of his supervision of the Dowlings' home had come to your notice, what occasioned the filing of a petition by you and your co-curator for a re-examination of Mrs. Dowling?

A Well, concern for her condition.

On the visits that we made there, we found that she was acting extremely strangely. She had gotten to the point where she was afraid of not only Heilman, but of almost everyone else. She would take small bits of food, for instance, and secrete them in various parts of the house, hide them there, as if she were afraid that she wouldn't get enough to eat and might have to resort to that at some time; and she would have intervals in which she wouldn't remember your name, or who you were, and intervals in which she couldn't recall what had happened the day before.

As an example, she couldn't recall her giving the power of attorney to Mr. Heilman.

Being aware that her competency had been examined previously by doctors, who felt that she was in a weak condition, but that possibly had enough competence or ability to select good people to help her in her business decisions, we now felt that she had failed to select good people, and could become the victim of designing persons, and that, in all fairness to her and to the estate, that she should be re-examined.

Q Well, when this Heilman power of attorney situation developed, did you or not consider the fact that Heilman had been employed and placed in that position by the Massachusetts people whom Mr. Dowling felt were out to disturb his fortune?

A Well, there was some indication that possibly he was seeking to take everything that he could back to Massachusetts, you might say, and either in his hands or in the hands of someone who might have sent him.

Q Who had employed Mr. Heilman for them up in Massachusetts?

A The Massachusetts conservator.

Q And who was it who later sent Mrs. Bickford down here to get some papers signed?

A The same lawyer, the Massachusetts conservator.

Q Well, now, what was your feeling with respect to your legal right, as co-curators for Mr. Dowling, to present to the Court this deterioration of Mrs. Dowling, and request further medical examination? Do you think you had that legal right?

A Yes, we did. Frankly, we gave that matter a lot of thought, a lot of concern and a lot of inspection.

I finally concluded that we stood directly in the shoes of Mr. Jewell Dowling, who was the sole heir, and the husband of this person now that we - - - whose competency we questioned; that as such, we could sue and be sued, and that as such, we could bring this action. It was indicated that it should be done expeditiously, and all steps should be taken to prevent any waste or dissipation, and that it should be done at once.

Q What do you mean, Judge Prunty, when you say you could sue or be sued?

A As curators for Jewell Alvin Dowling, if there was some claim against him, the suit would be brought against the curators.

Q And on the other hand, if there were any matter which should be claimed on his behalf, that you would have the right to make that claim?

A Exactly.

Q Would there be any other person who could make the claim?

A No sir, we would be the persons legally responsible for that action.

Q Well, now, upon the bringing of this matter to Judge Holt's attention, did he direct a further medical examination of Mrs. Dowling?

A He did. We prepared a petition in the usual form, under the curatorship statute; guardian ad litem was appointed; doctors were appointed; provision for notice was set forth in the petition and the order; and a date for the hearing was set.

Q Were you present at the hearing?

A I was.

Q Do you recall what developed before Judge Holt?

A Yes. The doctors testified - - -

Q Do you recall who they were?

A Dr. Anderson was one of the doctors, and I believe Dr. Alspach.

SENATOR DAVIS: Mr. Chief Justice, point of order.

CHIEF JUSTICE TERRELL: The point of order is well taken.

Court is adjourned until two o'clock.

Whereupon, at 12:00 o'clock, Noon, the trial was recessed until 2:00 o'clock P. M. of the same day.

AFTERNOON SESSION

The Senate reconvened at 2:00 o'clock P.M., pursuant to recess order.

CHIEF JUSTICE TERRELL: Order in Court.

Unless there is some objection, I declare a quorum present.

MR. HUNT: Shall we proceed, Your Honor?

CHIEF JUSTICE TERRELL: Yes.

Thereupon,

JOHN W. PRUNTY,

resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. HUNT:

Q Judge Prunty, I believe that at the noon recess, you had just named the two doctors who examined Mrs. Dowling and appeared before Judge Holt at the hearing, is that correct?

A Yes, sir, which was Dr. Anderson and Dr. Alspach.

SENATOR SHANDS: We can't hear the witness from here.

THE WITNESS: Dr. Anderson and Dr. Alspach.

BY MR. HUNT:

Q Will you turn it up, and turn the mike around a little more toward you?

A Dr. Anderson and Dr. Alspach.

Q Do you know those two doctors, and what their specialty is in Dade County?

A Neuropsychiatrists.

Q Both of them?

A Both of them.

Q Were other witnesses before Judge Holt, in addition to the doctors?

A Yes, there were. Mr. and Mrs. Arnold, I recall, testified.

Q Who are Mr. and Mrs. Arnold?

A They are neighbors of the Dowlings.

Q Do you remember the crux of their testimony?

A Yes, that they had been to the house, that they had observed the actions of this man, Heilman, that he had appeared several times to be in intoxicated condition.

He went about the house improperly clothed, and Mrs. Dowling was in fear of his actions, and that he was not keeping the house properly, nor was he looking after it properly.

Q Was there other testimony?

A There was testimony by Mr. Thompson, I believe, the deputy sheriff.

Q Is that Deputy Sheriff Thompson?

A Yes sir.

Q Well, upon the entry of an order appointing curators for Mrs. Dowling upon the adjudication of incompetency, what steps were taken by the curators to correct the situation which was testified to before the Court?

A Steps had already been taken to have an injunctive order entered against Heilman, and in connection with the use of his power of attorney, or to prevent him in any way from interfering with the assets of the property of Mrs. Dowling.

Steps were then taken to seek to cancel the power of attorney. Steps were taken to inventory the assets of her estate and to take charge of those.

Also, steps were taken to find a suitable replacement for Heilman, a housekeeper who would come to the premises and take proper care of things.

Q What steps did you take to select proper housekeepers?

A We interviewed a number of people who were interested in the job; ran an ad, seeking to solicit people who would be interested in such employment; consulted with them and interviewed them and selected this particular couple, a Mr. and Mrs. Bynon.

Q Is that B-y-n-u-m?

A B-y-n-o-n, I believe it is.

Q B-y-n-o-n?

A Yes.

Q Were they elderly, or middle-aged, or young people?

A Mr. Bynon was around fifty years of age - - -

Q He has since passed away, has he?

A He has since passed away; and his wife, at that time, was, say, forty-two or forty-three.

Q I believe you stated - - -

A They lived on the premises, and as I recall, wanted - - - undertook to do the job for approximately the same price as was being paid to Heilman.

Q At approximately the same price you had paid Heilman?

A That's right.

Q Yes. And did Mrs. Bynon cook for Mr. and Mrs. Dowling?

A She did. She prepared the meals and took care of the house, with the assistance of her husband, and her husband, of course, assisted the old man about, was able to help carry him about from place to place, and he would drive the car, was able to take full charge of their living requirements and needs there.

Q I believe you testified this morning that your efforts to block the delivery of the \$20,000 to Mr. Heilman, which a Massachusetts stock broker had procured as a result of the sale of Mrs. Dowling's securities, were successful, and that the \$20,000 was never delivered to Heilman. Is that correct?

A That's correct, they were successful; nor were any of the other assets liquidated or dissipated.

Q What happened to the \$20,000?

A The \$20,000 was returned to Mr. Forrest Emory, the stock broker, who subsequently became appointed the temporary conservator in Massachusetts for Mrs. Dowling.

Q Under Court order up there?

A Under the Court order.

Q Do you have personal knowledge of the manner in which Mr. and Mrs. Bynon cared for Mr. and Mrs. Dowling?

A Yes. They did a very excellent job.

The meals were well prepared, were attractive, and the - - - of course, the Dowlings seemed to gain weight and seemed to be in better spirits and a better condition of health than they ever had been; and that was further verified by their attending physician.

Q Did Mr. Bynon drive an automobile?

A He did.

Q And did he take them driving in the car that you had purchased for Mr. Dowling?

A He did frequently; that was one of the few pleasures that the old man seemed to be able to enjoy. He was helped into the car; could be taken to various places, and he seemed to enjoy that a great deal.

Q Now, I wish you would state why it was you purchased the Cadillac for Mr. Dowling.

A It was, basically, Mr. Dowling's idea.

On each contact with him, he stated that he had money, that it was his money, and that he wanted the best, he was entitled to the best; and he would say, "Isn't a Cadillac the best? That's what I want."

He even found a picture of one in a magazine he kept handy, and would show that to us when we went there to see him and talk to him.

Q He'd show you a picture of a Cadillac as a part of his request, is that right?

A That's correct.

Frankly, the old car that they had was not a safe one or an adequate one for their use.

Q From whom was the Cadillac purchased?

A The Cadillac dealer there, Dolan Brown Motors.

Q Now, with respect to the repairs and renovation of the house, the home, and the purchase of new furniture, state why that was undertaken?

A The house was in extremely bad condition of repair. From the standpoint of the preservation of the property, if no other, it was indicated and demanded that remedial steps be taken.

Q Yes sir.

A It apparently hadn't been painted in ten years or more. It not only needed paint, but there were leaks in the roof, the wood around the windows had deteriorated in some instances, the actual glass windows were out in some places. It needed a thorough and complete conditioning and renovation.

The furniture in the house was very sparse, very old, deteriorated, and had been used and abused, and as I have previously stated, he was unable to control some of his personal needs, such as his bladder, and that had spoiled a good bit of the furniture; and there was a need to set up there, if they were to live in that house and enjoy that property, a condition that would be more for their comfort, more for their living ability.

Q And it was your undertaking, then, to improve their lot in life for the balance of the term of their life?

A It was.

Q Both as to the Cadillac and the improvement of the real estate?

A It was; and we consulted with the Massachusetts people on that; they seemed to be in accord.

We consulted with the attending physician, and the attending physician felt that if proper surroundings could be created there in their home, a place which they were used to, that the likelihood of extending their life term and the increase of their happiness while they remained there, would be accomplished.

Q Now, when you determined to repair and renovate the home place, did you or not start out by the employment of a landscape architect to lay the situation out?

A Yes, a landscape organization was employed, who made a plot and diagram of what should be done.

There was just nothing in the yard but weeds, stones and grass, plus a sizeable excavation near the seawall.

This residence, or estate, is on the bay, and adjacent to the seawall, there was a great decline there where, apparently, the sea water had washed underneath the seawall and caused it to erode, not only in that area, but a great portion of the yard area, a great portion of it.

A great portion of - - -

Q Wait just a minute, Judge. That microphone has gone sour again.

A A great portion of the whole yard area seemed to be below grade level. It was necessary to do the filling, to bring the whole area up to grade level, and then do the planting, the landscaping.

Q Do you know whether or not rock was packed in behind the seawall before - - -

A Yes, there was.

Q - - - the dirt and fill was put in?

A There were a number of truckloads of rock brought there, a number of truckloads of fill and dirt.

Q Do you know the number of truckloads of fill and rock - - -

A I don't know the exact number, but there must have been at least thirty or forty or more.

Q Now, who did that work?

A The landscaper, Art Landscaping Company.

Q Art?

A Yes.

Q Were you satisfied as to the character and standing of that organization in the Miami area?

A Yes. They had never done any work for me, but I was familiar with their general reputation in the area. They had done a great many, probably the majority of the large jobs on the beach, large estate jobs, hotel jobs, and know the character of the territory there, the requirements, with reference to shrubbery and grass in that particular area, and I felt they were qualified to do it.

Q Judge Prunty, with respect to the compensation paid to the curators for both Mr. and Mrs. Dowling in this matter, what - - - in what manner was the application and order entry in those - - - on those matters handled?

A With reference to the fees paid the curators?

Q Yes.

A We tried to set forth amply and fully, by petition, written petition, exactly what work had been done and what had been accomplished; presented that to the Court; let the Court enter an order on that petition as to the reasonableness - - - as to a reasonable fee for the work done; and all those petitions appear in the file, and set forth what was done and upon what the fee is based.

Q Did you personally, or did Mr. Heller, to your knowledge, request any particular amounts to be set as fees in this matter of Judge Holt?

A No. As I recall, we both attended the hearing at which the fees were set, or discussed, and no amounts were discussed.

The Court asked some questions with reference to the petition, and various other items of work.

We made inquiry as to whether or not additional testimony would be required or needed by the Court, affidavits or other evidence in support thereof, and we were told that the Court did not require it.

Q Do you recall whether or not the petitions were verified?

A I, at this point, don't recall. The files would show that.

Q Were the files before the Court on that occasion?

A The files were before the Court, and there would be no hesitancy about verifying these petitions.

The files were before the Court, and it's my recollection that the guardian ad litem was present also.

Q Judge Prunty, Mr. George T. Clark, of the Miami Bar, appeared before the Senate here as a witness in connection with the compensation awarded in this case, as did Mr. Ralph M. Cooper.

Will you state to the Senate the stature and reputation that those men enjoy at the Bar?

A Both Mr. Cooper and Mr. Clark are, you might say, older or senior practitioners in the Miami area, both having practiced there, I would say, thirty years or more. Both enjoy very fine reputations. Both have specialized, to some extent, in real estate matters, estate and real estate matters.

I would have no hesitancy whatsoever in entrusting any matter of business of mine to either one of them.

Q Judge Prunty, you were appointed to office, I believe, by the current Chief Executive of the State, were you not?

A That's correct, sir.

Q And did you later qualify in the 1956 primary for reelection?

A I did.

Q Did you go through the primary unopposed?

A I went through the primary unopposed.

Q Prior to the general election, did there develop in Dade County a now outlawed Grand Jury report and a newspaper drive, somewhat aimed in your direction?

A There certainly did.

Q Did you enjoy the dubious pleasure of a write-in candidate at the general election?

A I was forced into an election in November with a write-in candidate as the result of the report you refer to.

Q Can you state whether or not the - - - your candidacy was favored or disfavored by the morning journal in Miami?

MR. MUSSELMAN: Hold it just a second, please. I want to enter an objection to that question, Your Honor. I think it has no relevancy whatsoever to the issues at trial.

MR. HUNT: Your Honor - - -

CHIEF JUSTICE TERRELL: I don't think that question is relevant, Mr. Hunt.

MR. HUNT: May I be heard on it?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: My purpose is to let the Court know, to advise the Court that the matter of the handling of the Dowling estate became a very intense campaign issue laid before the voters in editorial after editorial in Miami, and the voters returned Judge Prunty to office notwithstanding an intense newspaper campaign against him.

I think, since we enjoy the elective system of American democracy in this country, that we should be permitted to let the Senate know what transpired only a few months ago.

MR. MUSSELMAN: May it please the Court, I believe that the interest that we might have in this is whether or not Judge Holt was up for election at that time. I believe that it has no relevancy to the question of Judge Holt's crime.

SENATOR JOHNS: Mr. Chief Justice - - -

CHIEF JUSTICE TERRELL: Senator Johns.

SENATOR JOHNS: - - - I would like to tell the Court that that campaign is still going on by the Miami Herald.

I would like to read to the Court a little article that appeared in the Sunday issue of the Miami Herald:

"As for the six" - - - well, let me start at the first - - - "In the Judge Holt Impeachment case in Tallahassee, don't be fooled into thinking that the 29 to 6 vote against dismissal of the charges necessarily means the same vote will be recorded when the final ballot is cast. However, it is a safe bet that Holt can count on the six North Florida votes he got, but he needs six more.

"As for the six, they automatically killed off any chance they might have had for Dade's support in a statewide race. The fact that they didn't want to bother hearing out the case does not set so well with the voters down here. However, of the six, none had even a remote hope for a State office anyway.

"The six were Senator Harvie Belser, from Crestview; Drew Branch, Sumatra; Charley Johns, Starke; Bart Knight, Blountstown; and Fletcher Morgan, Jacksonville."

I think the Court ought to have heard that, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Answer the question, Mr. Prunty, Judge Prunty.

BY MR. HUNT:

Q Answer the question.

A Would you read the question back to me, please? (Addressing the Court Reporter)

Q It had to do with the election issues, Judge Prunty.

A The - - - yes, the Dowling case was the - - - one issue in my campaign.

My opponent had copies of the Grand Jury report reproduced and distributed them liberally from his headquarters, and I'm pleased to say that, thanks to my friends, I survived the election in spite of seven separate editorials that were written against me by the Miami morning newspaper.

In connection with the campaign, if this is of interest, I did advise my friends and the voters of certain records that I had checked with reference to other cases that appeared in the files of Dade County, and asked them and challenged them to check those files and compare the work done in those files and the fees paid in those files, with the fees paid in this particular case.

If the Court is interested - - -

MR. MUSSELMAN: May I renew my objection, please, if the Court please?

CHIEF JUSTICE TERRELL: I don't think that's - - -

MR. HUNT: I'm ready to ask another question.

BY MR. HUNT:

Q Judge Prunty, in that connection, did you make some check of other Court cases and attorney's fees paid for comparison purposes?

A Yes, I did.

Q Do you have a notation of those - - -

A I have a notation of a few of them.

Q - - - findings before you?

A Yes sir.

Q Will you state to the Senate, briefly, a few of the cases you checked, and what fees were paid?

MR. MUSSELMAN: May I please interpose an objection on the basis that no proper predicate has been laid.

We do not object if he can give some of the background of those cases, or if we had the Court files here, we could check them out ourselves.

CHIEF JUSTICE TERRELL: Objection sustained.

MR. HUNT: If Your Honor please, I don't like to beg the question, but I think that the matter of fees awarded and paid to Dade County lawyers by Dade County Judges apparently is a matter of importance before this Court, and it can only be - - -

CHIEF JUSTICE TERRELL: I think so too, and he can testify as to the amount of the fees.

MR. HUNT: Well, that's what I have asked him.

BY MR. HUNT:

Q Will you identify the case and state the amount of fees awarded?

A Yes sir.

The Deauville Hotel receivership case, in the Federal District Court, Southern District of Florida, Number 1148-M - - -

MR. MUSSELMAN: This is a Federal case, Judge Prunty?

THE WITNESS: Federal receivership case in Miami.

MR. BEASLEY: We object to that, if the Court please, because that's not a Circuit Court case. We understood that counsel was referring to fees allowed by Circuit Judges of Dade County, not United States District Judges.

MR. HUNT: It costs just as much to practice before the Federal Court as it does across the street in the State Court, and the practice is the same, when it comes to a basis for professional compensation.

MR. MUSSELMAN: May it please the Court, I believe the Court files themselves would be the best evidence.

Do they have these files present, so we can check the work done?

MR. HUNT: These files are not present. This witness is a lawyer; he's a Circuit Judge of Dade County. He has personally made these investigations, and I request again that he be permitted to state the results of his investigation.

Counsel can bring up the files, if he wants them.

CHIEF JUSTICE TERRELL: Answer the question, Judge Prunty.

THE WITNESS: In that case, Number 1148-M, the total fee paid to attorneys and receivers - - - it was a receivership case, in the Federal Court - - - were \$270,000; also, a portion of that case was in the State Court, Number 92335-C, and fees were awarded in that case of \$52,000, or making total fees of \$322,000 for receivership and attorneys in connection with the Deauville Hotel case.

BY MR. HUNT:

Q That used to be called Deauville Casino, did it not?

A Yes sir.

The value of the property - - - it was an oceanfront hotel, and was valued, to my recollection, at that time, at somewhere between a million and a million, five hundred thousand.

The Helen Maupi estate, Number 29892, which shows from the files to have a total evaluation of some \$657,000, fees allowed - - - this was an estate case - - -

Q In what Court?

A In the County Judge's Court - - - fees allowed to executors and attorneys totaled \$143,000.

In the Ralph D. Mershon case - - - no relation to the Luther Mershon who appeared before this Senate - - - Number 27575, that case is still open; the fees in the total

amount of \$260,000 have been allowed to attorneys and to executors.

In a recent case, that of Edward N. Claughton, which is still open, Number 35332, preliminary fees, or initial fees were allowed to executors and attorneys of \$91,700.

Q By what Court?

A County Judge's Court.

Q And the one right prior to that; I don't believe you stated - - -

A That was also in the County Judge's Court.

Q The County Judge's Court?

A Yes.

In the L. B. Wilson estate in the County Judge's Court, Number 33987, preliminary fees there were allowed to attorneys and to executors of \$85,000.

Q What was that Court?

A County Judge's Court.

Q Judge Prunty, what - - - strike that.

Is there a policy in the Circuit Court, or in the Federal Court, to your knowledge, as to the selection of receivership or trustee personnel by Judges?

A Well, each Judge, I think, has his own policy, or sets his own program, with reference to receivers or trusteeships or curators.

I can only give you my own viewpoint on that.

Q Do you know what the policy in the Federal Court has been for some time?

A The policy in the Federal Court has been to appoint one or two persons almost exclusively in receivership matters and trusteeship matters.

I presume that they were available.

Q Do some of the Circuit Judges follow a similar policy?

A Some of the Circuit Judges follow a similar policy.

Q And do you have any fixed policy on the matter?

A I follow a policy of trying to appoint someone that I have confidence in, that's had experience in the work to be undertaken, and who is available to do the job.

Now, that - - - the matter of availability is always a factor, because it isn't every person, every capable person, that is available for the particular job that is at hand, and of course, invariably, it requires immediate attention; otherwise, it probably wouldn't - - - the appointment probably should not be made unless it did require immediate attention.

MR. HUNT: Take the witness.

MR. PIERCE: Take the witness.

MR. HUNT: One moment, please.

MR. PIERCE: Wait a minute.

BY MR. HUNT:

Q Judge Prunty, do you know whether or not there is an action pending in Massachusetts by the conservator to set aside the Jordan Marsh lease which Mr. Dowling had imposed upon him up there?

A Yes, that's my understanding. I've been so advised, by the Massachusetts people, that either an action is contemplated or pending.

Q That what?

A That either an action is pending or contemplated to cancel the lease on the Jordan Marsh property.

I think it's pending now.

Q Pardon?

A I think it's pending now.

You'll have to remember that I haven't had any active contact with this case for some eighteen months now.

MR. HUNT: Oh, I see. That's all.

THE WITNESS: Which I previously testified.

BY MR. HUNT:

Q One more question.

Judge Prunty, by what vote were you elected in Dade County over your opponent?

A The margin, I think, was some ten thousand votes. One hundred twenty thousand votes cast.

Q Pardon?

A Ten thousand, with one hundred twenty thousand being cast.

MR. HUNT: That's all.

CROSS EXAMINATION

BY MR. MUSSELMAN:

Q Judge Prunty, subject to stipulation later, would you accept my figures of 66,032 for Prunty, and Probey, 62,712, a difference of some four thousand votes?

A I'll accept that as a tabulation which was filed, except that there were a number of votes which were written in in my name which couldn't be counted for me.

Q But the official, those are the official figures?

A Yes.

Q Now, isn't it true also, Judge Prunty, that Miami operates, or Dade County does, on a machine basis, voting machine basis?

A That's correct.

Q Is there any precinct that does not operate on a machine basis, that you know of?

A Not that I know of.

Q What had to be done to enter the name of your opponent against you in the general election?

A Had to be written in.

Q How did they write it in, sir?

A With a pencil.

Q Where?

A Pencil was attached to the machine, and all of the deputies had instructions to advise them how to write in.

Q How long has your opponent, Mr. Probey, been a resident of Miami, or Dade County?

A Well, I'm not too well versed in my opponent's background; since, I think, 1942 or '38 - - - I'm not - - -

Q All right, sir. Would you repeat, please, for the Senate the total amount of fees received by you as curator for the Dowling estate?

A For both estates?

Q For both estates, that's correct.

A Approximately \$32,000.

Q Was it more or less than \$32,000?

A \$32,000.

Q Did you also receive a fee in the Probate Court?

A Yes, of \$500.

Q Did you also petition for a fee in Massachusetts, in connection with the contest of the will?

A Yes.

Q What amount did you petition for?

A \$5,000, which is not paid, and has not been paid.

Q You withdrew that from the Massachusetts Court?

A Upon advice of counsel in Massachusetts.

Q Wasn't it also, coincidentally, after the Grand Jury report had been entered, that you withdrew?

A It may have been, but that was not the reason.

Q Now, on the question of your possible interest in the outcome of this trial, Judge Prunty - - -

A I didn't understand you.

Q On the question of your possible interest in the outcome of this trial, I'm going to ask you a few questions.

I believe you testified the other day that you and Judge Holt were close personal friends?

A Yes.

Q How long have you known Judge Holt?

A Since 1925 or '26, when he first came to Miami.

Q During the time since you have first known him, have you visited with him in his home, and he in yours, and had - - -

A When I first knew him, I was a youngster in high school, and I didn't visit to a great extent with the Holts at that time.

Q Have you subsequently done that during the years?

A Yes, he's visited in my home, and I've visited in his.

Q Have you taken trips with him?

A I think I've taken one or two trips with him to football games, something like that.

Q Did you happen to take a trip with him to the graduation services at Harvard University, or an alumni meeting at Harvard University?

A Yes, I did.

Q Who accompanied you on that trip?

A Mr. Heller went - - - he was a graduate of that institution, and he had arranged that - - - for me to be able to participate.

It was a celebration of the birthday of John Marshall, as I recall.

Q Who else accompanied you on that trip?

A Judge Holt.

Q Judge Holt and you and Mr. Heller, is that correct?

A Correct.

Q Did each of you pay your own expenses on this trip?

A That's correct.

Q I believe, sir, you were also a law partner of Mr. T. A. Whiteside - - -

A That's correct.

Q - - - Is that correct?

When was that partnership dissolved?

A In 1955.

Q And when were you elevated to the Circuit Court Bench?

A 1956.

Q Do you and Judge Holt serve as directors in any banking organizations together?

A No.

Q You do not?

A No.

Q Now, I believe - - -

A You mean do we serve, together, in any banking organizations?

Q Yes.

A No.

Q Has Judge Holt selected you as Master or Curator or Receiver in any other estates or any other matters?

A Yes, I have been appointed a Master by Judge Holt, I guess, a total of four or five or six times over the period of 1947 to 1955.

Q Did you heretofore make out a list of your Masterships before Judge Holt, or by Judge Holt?

A Yes, I made all sorts of lists.

Q If I handed you one, would you please say whether you recognize it?

A Yes, I recognize this.

Q Did you make that list yourself?

A I don't recall whether I made that list or not.

Q Does it look to be a fairly complete list?

A It appears to be complete.

Q Do you have any independent recollection of each of those entries set forth there?

A No, I do not.

Q What is the last one shown on that list, Judge Prunty?

A Holland versus Holland.

Q What was the Master's fee awarded in that case?

A \$3,500.

Q And when was that case?

A That case extended over a period from November - - - either September or October, 1954, until May or June of 1955.

Q That was during the same period you were serving as curator for the Dowlings, isn't that correct?

A During part of that period, yes sir.

Q Did that case absorb a great deal of your time?

A It took some time for the hearings, yes sir.

Q How long? Do you recall, offhand?

A I think there were approximately two weeks of hearings altogether. They weren't concurrently, but altogether.

Q I believe you testified also on direct examination that Mr. Heller did most of the leg work in this case?

A Yes.

Q And filed most of the petitions?

A Yes.

Q Judge Prunty, do you remember filing - - -

A Do you mean physically taking them to the Court House and filing them? Yes.

Q That's correct; and preparing them also, is that not also correct?

A No sir.

Q Judge Prunty, tell me if this is true or not - - - and I have not had the files in my possession to accurately check it, but from my memory, I think you have only prepared and filed three petitions and three orders in this case.

I wish, if you have knowledge of others - - -

A On what do you base that?

Q I am trying to check through the file papers.

A On the stationery used?

Q On the stationery used.

A I thought I made it abundantly clear this morning that the method of operation was usually for Mr. Heller to come to my office, at which time we sat down and we worked out together the substance of the petition or the matter that was to be presented.

Very frequently it was sketched out in longhand. I recall myself, in my own hand, writing out a number of the petitions, and it was then either from that draft or from a rough type draft, made in my office or in his office, that the final draft was prepared, and it's true that the final drafts were, the majority of them, prepared on - - - with his stenographic services.

Q And only - - - am I correct in saying that in only three instances were the orders or petitions actually prepared in your office, on your stationery - - -

A I don't know about three, but certainly a majority of them - - -

Q - - - or do you recall?

A - - - were prepared on his stationery and on his typewriter.

Q Now, my recollection is that the petition for Mrs. Bickford, to have Mrs. Bickford - - - or have her show cause why she should not be held in contempt, was prepared by you - - -

A Yes.

Q - - - on your stationery?

A Yes.

Q Was it not a fact that at the time of the preparation of that petition, that Mr. Heller was in Massachusetts?

A Yes.

Q And you prepared that without advice or assistance from Mr. Heller, is that correct?

A I consulted with him. He knew about it.

Q He called you from Massachusetts - - -

A Yes.

Q - - - or did you call him?

A I don't think - - - I think I called him. He was aware of it, understood it, and approved it.

Q Do you recall what the purpose of his trip to Massachusetts was at that time?

A Yes. He went to Massachusetts at the suggestion of the Court, in the company of the guardian ad litem, to insure against the dissipation of the liquid assets of Ina Dowling.

Q Didn't he also go there to be at a Court hearing in regard to the appointment of a conservator in Massachusetts?

A I think that the hearings with reference to the conservator occurred at that time, or shortly thereafter, and it was felt that we had a very real interest in what was done with reference to the conservatorship, if there was to be one in the State of Massachusetts.

Q Isn't it also true that the Court declined to appoint the conservator requested by Mr. Heller in Massachusetts?

A I wasn't present in Massachusetts.

Q Did Mr. Heller testify to that before the Court at a subsequent hearing, upon his return?

A Mr. Heller wasn't appointed. I can give you that result.

However, I don't think that he was directly seeking to be appointed, but seeking to have a party appointed that we had confidence in. I think he suggested Governor Devens as the conservator.

Q Now, Judge Prunty, you were appointed on June 22, 1954. The first award of fees occurred on October 21, 1954. Is that correct? Do you recall those dates?

A I think that's approximately correct. It's all in the record.

Q So, at the time that the fees were awarded for the first time, you were operating as curator for Mr. Dowling?

A Yes.

Q Did you contest the fees awarded to the various attorneys and receiver and receivers' attorneys and accountants and others at that time?

A I attended the hearing, but I did not take a position with reference to those fees.

All - - -

Q Well - - - excuse me, proceed. Finish your answer.

A All of the fees involved were for services that had been rendered prior to my connection with the case. I felt that the Court was in better position to know what a reasonable fee was than I was at that particular time; I had had no connection with any of it.

Q You left that entirely up to the Court?

A Yes sir.

Q In truth and fact, at the time that those fees were awarded, the curators had some \$37,000 in hand, is that correct, as of that same - - -

A I don't know whether that's correct or not. The auditor or the ledger book would reflect that.

Q Did anyone at any time ever contest any fees that were awarded in this case?

A I think the guardian ad litem filed, while I reflect, some objections, general objections, with reference to the fees in the Ina Dowling matter.

Q We'll have to verify that, sir, in just a moment.

A I could be mistaken, but I know the guardian ad litem was present, and he did file a number of objections, protests.

Q And who was the guardian ad litem, sir?

A Mr. Wright.

Q Mr. John Wright?

A John Wright.

Q Now, in regard to this power - - -

A I'd like to point out, if I may, that all these matters were a matter of public record. There was never anything hidden, concealed or stashed away on this. It's been a matter of complete public record, open for anybody to go inspect, utilize it all the time, as far as I know.

Q Isn't it true, sir, that the files were in your possession or in Mr. Heller's possession a great deal of the time, and that you were working on the files?

A They were, and at any time that anyone needed the files, they had only to inquire of the Clerk, and they were immediately returned and made available to them.

In fact, the charge-out card showed that they were handled by some thirty people, I believe, other than ourselves, in the course of the various transactions.

Q Regarding this power of attorney, where was it executed? Do you recall?

A In Massachusetts.

Q And when was it executed?

A In 1954. I don't recall the date; it's in the file also.

Q Is it reflected as evidence in the Court file?

A Yes, it's in the Court file.

Q I want to ask you to try to find that, please sir. I think it would be around January 10, 1955.

The Petition for Instructions on Mr. Heilman were - - - is Entry Number 210. See if it's not included on that one, please sir.

A No sir. Do you have the testimony? Do you have the testimony that was taken at the hearing?

Q No sir, I do not.

A It's my recollection that it was introduced at that time, or a copy of it was introduced.

Q We haven't had it in the file. We'll try to find that for you too.

A Possibly, if there's some particular matter that you need help on, maybe I can help you with it without having to delay this matter by long search.

Q I just wish to know the date that the power of attorney was executed.

A I can tell you approximately the filing date. The filing date was some date, either the last of November or first part of December. It was filed in the Public Records of Dade County; that's my recollection.

Q And it was executed in Massachusetts?

A That's right.

Q Was it executed - - - did I ask you - - - at the time that Mr. Heilman and the Dowlings were in Massachusetts, prior - - -

A Yes.

Q - - - to their return to Florida?

A Yes.

Q Now, as far as Mr. Heilman's motives, you can only surmise as to what his motives were, is that correct?

A That's correct, plus his personal behavior and actions, as to how - - -

Q Which you were told about?

A Yes.

Q By Mrs. Dowling?

A And the neighbors.

Q The neighbors and - - -

A And the deputy sheriff.

Q And the neighbors, who told you that he was not present sometimes?

A That's right, and that he came in intoxicated.

Q Is that - - -

A That's - - - all of that testimony is before the Court in connection with the incompetency hearing, the testimony of Mrs. Susan Arnold, the testimony of Mr. Arnold, the testimony of Mr. Thompson, and the testimony of the doctors.

Q Do you know what his intent was, as to the \$20,000, when he received it, if he received it?

A No, except that here was a chauffeur-handyman who suddenly liquidated \$20,000 that was to be sent to him.

Q Well, I believe that Mr. Heller testified that an attorney in Massachusetts, a well-known attorney, was the Notary Public on the power of attorney?

A I think that that may be correct, yes.

Q So, it was your feeling that he was probably acting under the instructions of the attorney in Massachusetts, is that correct?

A No, not the attorney that executed the power of attorney.

Q Do you recall who the attorney was in Massachusetts?

A No sir.

Q Was it Mr. Robert Meserve?

A No sir.

Q The gentleman that - - -

A No sir, I believe it was Mr. Martin, or some similar name.

You're speaking, still, of the power of attorney?

Q That's correct.

A It was not Mr. Meserve.

Q Now, I believe you testified this morning that Mrs. Dowling was not only afraid of Heilman, but of most everyone?

A She was a very coy, frightened individual.

Q Did you take that into consideration when she told you of her fear of Heilman?

A Yes. It was, frankly, in connection with the incompetency hearing; we relied principally upon the opinion of the examining doctors.

Q In truth and in fact, there had been considerable difficulty between the authorities in Massachusetts and the authorities in Florida, as to who was to administer what portions of the estate, is that correct?

A Only to the extent that the Massachusetts people apparently were intent on establishing an unquestioned domicile, or residence, for the Dowlings in Massachusetts, where they were at one time.

Q And the Florida Courts were now concerned with establishing the domicile here?

A I don't think I follow your question.

Q Was there any interest evidenced by the Florida Courts to show that the Dowlings were domiciled in Florida?

A No, other than the Court was acting upon the evidence before it.

Q Well, is it true, as a matter of law, Judge, that the title to personal property normally, under the law, follows the residence, or domicile?

A Yes, I think that's what the law school - - - books in the law school teach now.

Q Now, in regard to these fees that you have testified to, were any of them awarded by Judge Holt? These various other fees, which we have no knowledge of?

A No sir.

Q What were the circumstances surrounding the one fee that you've mentioned, the Duval, or the Deauville Hotel?

A That was a receivership matter. It originated either out of a mortgage foreclosure or cancellation of a lease, and a receiver was placed in there.

It lasted approximately three years.

Q That lasted three years?

A Yes.

Q And what were the duties of the receiver, or was there more than one receiver, or was there only one, or - - -

A There was, at one time, one, and then my recollection is that there were two.

Q Two receivers.

What were their duties during that time? What did they do? How many hours did they spend on that case?

A Their duties were the general operation and management of the hotel.

Q They actually operated the hotel during the three years?

A That's right.

Q Were they paid at a flat rate of \$100,000 a year, or were they paid a total of \$300,000 at the end of their tenure of receivership?

A It's difficult to tell that from the files, because the files simply contain orders awarding fees.

Q And that's all the file contains?

A With reference to the fees.

Q With reference to the fees?

A Yes.

Q Does it contain proof, also, by other attorneys, as to the reasonableness of those fees? Was there any testimony taken in that particular case?

A I don't recall.

Frankly, at the time I was making my search, I was interested in finding some cases in which there were substantial fees awarded, because, apparently, that's what the public was interested in in connection with my election campaign.

Q Judge, weren't there - - - how many cases of receivership have there been in Miami? Do you have any way of estimating it?

A No, I would have no way of estimating.

Q But there must have been more than these that you have simply listed?

A I'm sure there were.

Q How many? Would it be many times more?

A Many times more.

Q Did you check the fees out in all these receivership cases that have ever been filed in Dade County?

A Yes, we checked a great number of them, and we found that generally, fees in estate cases and, for the most part, in receivership cases, ran approximately ten per cent; that is, attorney's fees and receiver's fees ran approximately ten per cent of the total evaluation of the amount involved.

Q And what was the total evaluation of this estate, the Dowling estate?

A The receiver listed it, I think, at \$1,900,000.

Q That included Massachusetts and Florida, did it not?

A Yes, it did.

Q What was the value of the Florida estate?

A Approximately \$1,000,000.

Q How do you arrive at that, Judge?

A I arrive at that, based upon the audit made by Mr. Wasserman, in which he set forth the actual assets that flowed through the hands, or the responsibility of the curators.

I think I have a copy of it here, if you're interested.

I see here the figure of \$939,671.

MR. MUSSELMAN: May I ask counsel for the Respondent if that was not filed in evidence this morning, what Mr. Wasserman testified to?

MR. HUNT: Yes, it was.

BY MR. MUSSELMAN:

Q Mr. Wasserman testified this morning - - - I believe you have in your possession - - - excuse me, Judge - - - a copy of the letter to Mr. Hunt, which was - - -

A Yes sir.

Q - - - filed in evidence this morning by Mr. Wasserman?

A Yes sir.

Q He testified this morning that there was no attempt on his part to make - - - draw a net worth statement for the estate by that statement?

A Yes sir.

Q As a matter of fact, in looking at the statement, you will see that not only does he include the value of the assets, but they also include rents received from that asset, isn't that correct?

A Yes sir.

As I understand it, it is an attempt to show the value of the property which came into the possession and control of the curators, for which they were responsible.

Q So, the value of the estate and what you are testifying to are two different things, isn't that correct, sir?

A No, I think that the features that you're entitled to take into consideration in setting fees is the total amount of money, in other words, handled by the curators, in addition to the value.

Q You handled some \$326,549.07 worth of securities from Massachusetts?

A Yes sir.

Q And they were returned to Massachusetts, isn't that correct?

A Yes sir.

Q So, you judge your fee on the basis of anything that went through your hands, whether it belonged to the estate or not?

A I think that's a factor that can be taken into consideration, just as the many other factors that may be taken into consideration in determining fees.

Q If you want to have a high fee, you include it; if you want to have a low fee, then you do not include it, is that correct?

A Well, Mr. Musselman, it wasn't a matter of wanting to have a high fee or a low fee; it was a matter of presenting all of the evidence before the Court.

Q How long did you have those bonds in your possession, Judge Prunty?

A Well, I don't think we are quite understanding each other.

We had the actual securities in our possession from the time of the appointment, in June, until they were returned, by order, sometime in July or August of 1954.

Then, with the appointment of curators for the Ina Dowling estate, we again had a responsibility for all of the assets, as you point out, the situs of which would be at the residence or domicile of the owners.

It was our position, and that was subsequently bolstered by statements from Massachusetts counsel themselves, that the Dowlings intended to remain permanently in the State of Florida, and that we would have the responsibility for their care and maintenance.

Q But there was a contest as to the domicile going on between counsel in Massachusetts and Florida. Didn't you testify to that?

A Contest as to what?

Q As to where the Dowlings were - - -

A There was - - -

Q - - - domiciled?

A There was at one time, and then, apparently, that resolved itself when they communicated with us to the effect that it was their understanding that they would remain permanently in Florida.

Q But at the time that you were appointed curators for Mrs. Dowling's estate, the bonds and securities had been returned to Massachusetts, and were not physically in your possession, is that correct?

A That's correct.

Q So, the only possible manner in which you could have included that in the estate for the computing of fees on Mrs. Dowling at all was that they had passed through your hands in July of 1954 - - -

A And that we were appointed as curators for the Ina Dowling estate.

MR. HUNT: Any further questions, Mr. Musselman?

MR. MUSSELMAN: Yes sir, I believe so.

BY MR. MUSSELMAN:

Q Is your memory of the file, Judge Prunty, such that you could go through the various events that occur in the file, and recite the monies on hand at that time?

A No sir, I couldn't, without the ledger book or the accountant's accounting.

After all, it's been approximately eighteen months since I have had access to it, more than eighteen months.

Q Now, you have testified to a number of different cases and a number of different fees. Your investigation must have disclosed in the Court small fees, did it not?

A You mean fees that have been smaller than this - - -

Q No, fees that have been smaller than the ones you selected as the highest fees you could find, and testified to?

A That's correct, there are some higher and some smaller, that's correct.

Q Did you make any attempt to determine, in these various fees that you have testified to, what services were performed, and what the value of the assets were?

A Generally. Of course, that would call for a very wide type of analysis, and my interest at that time was in inviting the voters' attention, mention to the people, generally, the fact that there were other cases in which fees were allowed of a substantial nature; that they could go and check and compare that work with the work done in this case from the files, all a matter of public record.

Q But you discarded all of the fees that didn't appear to be this high, is that correct?

A Well, I had judged, from the newspaper stories, that no one would be interested in a thousand-dollar fee, for instance, in a receivership case.

Q So, you selected the highest fees you could find?

A Apparently, it was only high fees that were in issue, and that the people were interested in.

Q Did you, in your investigation, investigate the Circuit Court, as to the fees awarded in the Circuit Court of Dade County?

A Yes.

Q Did you list any Circuit Court case here among the ones you read to us?

A Among the ones that I read - - -

Q There were none involved in - - -

A - - - except the Deauville case, in which a \$52,000 fee was awarded.

Q That was primarily a Federal case, though, was it not?

A It was transferred after that to the Federal Court, as a matter of fact.

Q The balance of those cases that you referred to were in the County Judge's Court?

A They were in the County Judge's Court, which handled all estate matters.

Q That is, involved administrator's fees, or executor's fees?

A Executor's fees, administrator's fees and lawyer's fees, because I look upon a curatorship matter as more akin to and similar to an estate matter in the County Judge's Court than I do a trusteeship or a receivership.

Q But there were no Circuit Court cases, with the exception of the Deauville Hotel case, that you even alluded to in these remarks?

A In the remarks I made today, no.

Q Now, is there any provision in the Florida statutes, relative to the fees for executors and administrators?

A Yes, they're entitled to a fee.

Q Is it set forth by schedules in the statutes?

A There is a schedule for executors.

Q Do you know if these fees followed in the County Judge's Court conformed exactly to the statute or not?

A Generally, as far as the executors were concerned, yes.

Q And they did, in the cases you recited to us here, follow the statute as to the fees?

A As to the executors, and that is the only place that I recall where the amount is suggested or detailed in the statutes, is with reference to administrators, not attorneys.

Q And it's not referred to in the curatorship statute, is it?

A You mean, is there any amount set?

Q That's correct.

A There is not.

Q Now, those statutes that determine the fees for the executors in the County Judge's Court, in probate matters pertain throughout the whole State of Florida, don't they?

A Yes sir.

Q So, these fees could have been awarded on that size estate in any county in the State?

A Yes, the curator statute applies throughout the State of Florida.

Q Is there any provision in the curator statute about fees? I asked you that a moment ago.

MR. HUNT: He answered it a moment ago.

MR. MUSSELMAN: He's restating it, too, I believe, Judge Hunt.

Will you please state the answer to the question?

THE WITNESS: Would you repeat the question?

BY MR. MUSSELMAN:

Q Is there any provision in the statutes setting forth the schedule of fees for curators?

A No.

Q That's entirely up to the Court's discretion, is that correct?

A Correct.

Q Now, when you were going in on these hearings to get your fees set, would you make any suggestions to the Court at all as to what you thought the reasonable fee would be?

A Not that I recall.

The only amount, or the only time that amounts were mentioned is with - - - was with reference to the Ina Dowling curatorship matter, in which it was pointed out to the Court that a fee totaling \$17,500 had been obtained by the Lane firm for similar work in the Jewell Dowling case.

Q What is involved in having a curator appointed, Judge

Prunty? Will you explain it to the lay members of the Court?

A It's completely set out by the statute, Mr. Musselman.

Q What steps did you take?

A Pardon?

Q What steps did you take in that of Ina Dowling?

A We tried to follow the statute exactly.

Q What did you do?

A We consulted authorities; had a number of conferences with reference to it; consulted the people in Massachusetts; consulted with the neighbors; consulted with the deputy sheriff; consulted with the Dowlings themselves; and prepared the petition which is indicated by the statute, and the petition was filed, and an order was obtained, which provided for the appointment of a guardian ad litem, provided for the appointment of physicians, provided the type of notice to be given, and provided for the date of hearing.

Q You filed a petition, and there was a notice and a hearing and an order, is that correct?

A Do you want me to go through the rest of the stuff?

Q All right, sir, if there are any more.

A We then consulted with the witnesses that were to be made available for the hearing; consulted with the physicians; consulted with the guardian ad litem, and inspected the authorities and prepared ourselves for the hearing.

The hearing was then held, and considerable testimony was produced by the doctors, by the neighbors, by, as I recall, the deputy sheriff, and other people, all of which is of record in the file, and at the conclusion of the hearing, were instructed to draw an order declaring her to be incompetent in the line and view of this particular statute, and for the appointment of curators.

Q Was there a contest over the appointment of the curators?

A The guardian ad litem appeared and filed a number of motions and objections.

Q Who was the guardian ad litem?

A Mr. John Wright.

Q One final question, bearing on your possible interest, Judge Prunty:

Did you represent Mr. L. J. Kurlan in the Belmont Park receivership matter?

A I did.

Q I note that among - - - that you at one time represented either a Mr. or a Mrs. Harvey. Do you recall that? In regard to payment of alimony?

A Mr. or Mrs. Harvey?

Q That's correct.

A In what connection?

(An instrument was handed to the witness by counsel.)

Q Do you recall that?

A I think I recall the matter. It was handled by my associate, Mr. George Orr.

Q I see. Do you recall which one of the parties you represented?

A Mr. Harvey, I think it was, and he was behind in the payment of his alimony, and a contempt citation had been issued against him.

Q Is that the same Mr. Harvey that had an interest in the Flame Restaurant?

A I don't think it was. I don't think there was any connection there. I think that the matter terminated by his going to jail. In fact, I'm positive it was not.

MR. MUSSELMAN: That's all.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Judge Prunty, counsel mentioned the Belmont Park receivership matter?

A Yes sir.

Q Have you seen Mr. William Walker, of the law firm of Blackwell, Walker & Gray, here in Tallahassee, that was - - -

A Yes sir.

Q - - - connected with that matter?

A I saw him last evening.

Q Did he represent the First Federal Savings & Loan, who brought that suit?

A He did.

Q You were asked concerning Holland versus Holland?

A Yes sir.

Q Was that case appealed to the Supreme Court, and affirmed in the Supreme Court?

A The case was appealed, including, I believe the amount of the Master's fees, and it was affirmed.

Q At the time of the adjudication of Ina Dowling, and your appointment to the curatorship in that matter, was not Ina Dowling domiciled in Dade County, Florida?

A She was, living in her home.

Q Now, counsel asked you some time ago about the time your partnership with Mr. Whiteside was dissolved?

A Yes sir.

Q Would you recur to that? When was the firm dissolved?

A 1955, August 31.

Q August what?

A 31.

Q August 31, 1955?

A Yes sir.

Q Counsel asked you if you undertook to select and report on smaller receivership fee cases. I'll ask you to state whether or not the issue was the larger and more substantial receiver and curator fee cases?

A No one, apparently, was interested in the small fees; they were interested in large fees; that was the issue, at least, in my election.

Q Judge Prunty, with respect to the statute pertaining to executors and administrators, are you or not aware that the fee schedule set forth in the statute specifically provides for higher awards for special or extraordinary services - - -

A Yes. I didn't get an opportunity - - -

Q - - - which, in the opinion of the Court, may exist in any case?

A Yes, I am. I didn't get an opportunity to bring that out, but the statute, in addition to setting a minimum, provides that for any extraordinary services, such as the sale of property, or defense of a law suit, or the prosecution of a law suit, that the executor or personal administrator will be entitled to additional compensation.

Q Well, then, the amount of additional compensation - - -

A Is in the discretion of the Court.

Q Let me finish - - - becomes entirely a matter of judicial discretion, even in the County Judge's Court, does it not?

A That's correct, sir.

Q And that's specially provided for in the statute to which Mr. Musselman made reference?

A Provided by the statute.

Q Now, is it not true that up to a few years ago, the matter of appointment of curators was handled exclusively in the County Judge's Court?

A Yes, that's correct.

Q Is it not also true that at the current time, the Legislature, in its wisdom, has returned the matter of curatorships to the County Judge's Court, where all matters pertaining to estates, executors and administrators, are handled under law?

A I have been so advised, although I haven't seen the repealing act.

Q And I believe you have testified that in the statute which was in effect at the time Judge Holt entered the orders in the Dowling matter, there was no schedule, no minimum, no maximum, no percentage set by the Legislature, of any type, is that correct?

A That's correct.

MR. HUNT: No further questions.

MR. MUSSELMAN: That's all.

CHIEF JUSTICE TERRELL: Judge Prunty, Senator Stratton, a Member of the Court, propounds this question:

"Your former law partner testified that the \$32,500 fees you received in the Dowling case were deposited in the law firm bank account, but he also said he did not receive any of this money, directly or indirectly. Can you explain why?"

THE WITNESS: Yes, I think I can.

It's true, the fees were deposited in the firm bank account, but at the time of our dissolution, we dissolved upon a basis, by agreement, whereby I received the benefit of all of the fees, inasmuch as I received all of the net proceeds that we earned in the law firm for that particular fiscal year; that would be from '54 to '55, August, '55; and it was all distributed to me, plus a portion of the capital account.

CHIEF JUSTICE TERRELL: A question by Senator Connor, of the Court:

"Was the total of all write-in candidates more votes than you received in 1956 in your Circuit Judge race?"

THE WITNESS: No sir.

CHIEF JUSTICE TERRELL: "What was the" - - -

THE WITNESS: May I explain that? And that included my name, included the writing in of my name.

CHIEF JUSTICE TERRELL: "What was the total vote received by all write-in candidates?"

THE WITNESS: I think the total vote received by all write-in candidates was something like 63,000, or 63,500.

CHIEF JUSTICE TERRELL: "What was your total vote?"

MR. MUSSELMAN: 66,032.

THE WITNESS: 66,032; officially, 66,032.

CHIEF JUSTICE TERRELL: Another question by Senator Connor:

"Have you, as Circuit Judge, ever appointed any curators?"

THE WITNESS: Yes, I have.

CHIEF JUSTICE TERRELL: "Have you, as Circuit Judge, approved any fees to curators in the amount you and Mr. Heller received?"

THE WITNESS: I don't recall that I ever approved any fees as yet, in a curator matter.

I think there have been two before me, both of them rather recently, and they have not progressed to the stage where

fees have been - - - been in a position for the awarding of fees.

CHIEF JUSTICE TERRELL: Senator Carraway, as a Member of the Court, offers this question:

"Would it be reasonable for the Florida curators and the Massachusetts conservator for Mrs. Dowling to both base their pay on the \$300,000 worth of securities?"

THE WITNESS: I don't know how the fees are allowed by the - - - for the conservators in Massachusetts, or upon what basis, and it wasn't a matter of basing it on any particular factor, but simply placing all the factors before the Court in the presentation that was made by the curators in Florida.

MR. HUNT: In that further connection, I have one or two questions of the witness.

BY MR. HUNT:

Q Is it true that Mrs. Dowling, the incompetent ward, was located in Dade County, Florida, as the place of her domicile, and all the curatorship work, so far as her care and attention is concerned, would have been performed in Florida, is that not correct?

A That's correct.

MR. MUSSELMAN: Why, then, Judge - - -

MR. HUNT: Just a minute.

MR. MUSSELMAN: Excuse me.

BY MR. HUNT:

Q Judge Prunty, have you ever had occasion to act as curator or co-curator in any other case?

A Yes, I have.

Q By appointment of what Court?

A By appointment of the Circuit Court in Dade County.

Q Were you a single curator or a co-curator?

A I was a co-curator.

Q Do you recall who made the appointment?

A I think Judge Herin; the case originated with Judge Herin.

Q There were two curators in that case?

A Two curators.

Q Did anyone raise any objection?

A No objection.

MR. HUNT: All right.

RECROSS EXAMINATION

BY MR. MUSSELMAN:

Q If Mrs. Dowling was domiciled in Florida, Judge Prunty, why did you find it necessary to file your petition for additional fees in the will contest in Massachusetts?

A Because we had undertaken the will contest case at the instance of the Massachusetts people.

Q And Mrs. Dowling - - -

MR. HUNT: Will you speak into that microphone, please, Judge Prunty?

THE WITNESS: We had undertaken the will contest at the instance of the Massachusetts people or, you might say, for them, and to assist them and on their behalf.

It had terminated adversely in the County Judge's Court; therefore, we were not entitled to a fee in that Court.

BY MR. MUSSELMAN:

Q As a matter of fact, Mrs. Dowling had no funds with which to pay you that fee, did she, in Florida?

A That's right.

MR. MUSSELMAN: I believe that's all.

MR. HUNT: That's all.

MR. MUSSELMAN: Just a minute.

BY MR. MUSSELMAN:

Q Judge Prunty, in regard to the question asked you by Senator Stratton, how much actual cash money did you get upon the dissolution of the Whiteside-Prunty firm?

A The matter of cash money is a different thing from the matter of the dissolution.

My income tax returns will disclose that my withdrawals for that year were something like \$35,000, that's the amount of money, the cash money, that I actually received.

Does that answer your question?

Q How much had you received prior to the dissolution, and how much of a check did you receive on the dissolution?

A Well, at the time of dissolution, I don't recall, but as I tried to tell you, that I actually drew in cash money some \$35,000 from the firm during that year, and I - - - on the basis of our distribution, the amount that I received was approximately \$50,000. There was not more cash, because I had some overdraws from previous years.

Q So, actually, it's a bookkeeping item, isn't it, Judge? You didn't receive the full \$50,000 when you dissolved?

A I received it to this extent, that I paid income taxes on it, yes.

Q Did you receive it in the form of the check, of a check? That was what I had in mind.

A A \$50,000 check? No sir, because I had been drawing against that, as I tried to tell you, for that year and for some previous years.

In other words, I owed the firm a substantial amount of money because of my overdraws.

Q So, both of you drew from the partnership account during the year prior to dissolution credit - - -

A If you had a copy of the partnership income tax return, I think it would give you the complete story.

Q What is this? Is that a copy of your income tax return?

A Yes sir.

Q What was withdrawn from the partnership by Mr. Whiteside?

A Thirty-five thousand and some-odd dollars.

Q What was withdrawn from the partnership by you?

A Thirty-three thousand and some-odd dollars.

I would like to add, however, that the total net income was \$41,000, plus a contribution which included a contribution from him of \$23,000; so, actually, he drew nothing. He ended up with a loss. I ended up with, you might say, a plus factor, upon which I - - - it was necessary for me to pay taxes of fifty thousand and some-odd dollars, and he ended up with a negative factor, of some \$9,000-odd.

Q Well, isn't it true, from what you've testified, then, that Mr. Whiteside drew from the partnership the sum in cash of \$12,000 over and above what he put into the partnership that year?

A No sir.

MR. HUNT: Are you through?

THE WITNESS: He couldn't do that, because there was only \$41,000 to draw from, the net income.

BY MR. MUSSELMAN:

Q Now, were there any expenses of your law office paid from your partnership account?

A Yes.

Q And under the normal course of events, you had not dissolved - - - if you had not dissolved, these fees would have been divided equally, under the fifty-fifty partnership arrangement?

A Or upon whatever basis we chose to divide.

Q But the basis you were operating on was fifty-fifty, wasn't it?

A No sir. At the end of each year, we determined on what basis we divided the proceeds.

Q Judge Prunty, if Mr. Whiteside put in \$23,000 and drew out \$35,000, the difference is \$12,000, isn't that correct?

A The difference between those figures is \$12,000.

Q And did you - - -

A But, in reality, he did not get that amount.

Q Even though your income tax return shows he is charged with that amount, and he paid tax on that?

A He did not pay tax on that amount. He had no income to pay tax on - - - I mean, from this source.

MR. HUNT: Anything further, Mr. Musselman?

CHIEF JUSTICE TERRELL: Any further questions, Mr. Musselman?

MR. MUSSELMAN: We are consulting at the moment, Your Honor.

Rather than to delay any further at this time, I'd like to ask that this witness be excused, but that he be retained here for a moment until I can familiarize myself with some of the matters that he has testified to, unless counsel can give the permission, or the Court can give permission for counsel other than myself to cross examine the witness on this particular subject.

CHIEF JUSTICE TERRELL: Do you want to do that cross examining now, or at a later point?

MR. MUSSELMAN: We could do that now, Your Honor, but I am not prepared to cross examine the witness on that point.

CHIEF JUSTICE TERRELL: Very well.

Judge Prunty, here's a question sent up by Senator Kelly, of the Court:

"Do you have any idea as to what fees were allowed the Massachusetts conservator in this case?"

THE WITNESS: I don't recall the amount of the fees.

MR. HUNT: If Your Honor please, I'll have to ask that counsel complete the examination of this witness in accordance with the rules. This witness is bound as Judge Crawford was, to get back to Miami.

CHIEF JUSTICE TERRELL: How much time do you want, Mr. Musselman?

MR. MUSSELMAN: It won't take but a few moments, Your Honor.

CHIEF JUSTICE TERRELL: Well, we'll take a ten-minute recess, then, and you'll finish immediately after the recess.

Whereupon, a short recess was taken.

CHIEF JUSTICE TERRELL: Order in Court. Unless a question is raised the chair will declare a quorum present.

BY MR. MUSSELMAN:

Q You testified a moment ago, I believe, Judge Prunty, that the \$23,000, or thereabouts, contributed by Mr. Whiteside, went into your net income?

A No sir. If I did, I'm in error. It was a contribution to the capital account.

Q All right, sir. So, he actually contributed, during that

year, \$23,688.89, and he withdrew \$35,587.56, as a total - - -

A To the capital account.

Q And there is a difference there of \$12,000?

A In the capital account, that's right, but I still got the entire net proceeds.

Q That was a method worked out - - -

A If you can figure out how I could get the entire net proceeds and Mr. Whiteside still get \$12,000, why, we've lost \$12,000 somewhere.

Q Well, as a matter of fact, he actually did withdraw from the partnership account the \$35,000 figure, and the other - - -

A Which was charged to his capital account.

Q But wasn't it a bookkeeping item, as far as - - -

A It wasn't a bookkeeping item, it represented dollars; \$23,000 is \$23,000.

Q I think we agree on that, although it doesn't sound right.

MR. HUNT: Are you through, Mr. Musselman?

MR. MUSSELMAN: I wanted to ask him to identify this for the purpose of introducing it.

THE WITNESS: I identify it.

MR. HUNT: What is it, Mr. Musselman?

MR. MUSSELMAN: That's the income tax return for 1954 to 1955.

MR. HUNT: Go ahead. Thank you.

THE WITNESS: I didn't check all the papers. I presume they're all in there.

MR. MUSSELMAN: I wish you would check them.

(Whereupon, said instrument was received and filed in evidence as House Managers' Exhibit Number 45.)

REDIRECT EXAMINATION

BY MR. HUNT:

Q What was your firm's fiscal year, Judge Prunty?

A From September 1 to August 31, 1955.

Q And is it your testimony that Mr. Whiteside received no part of the net earnings of the firm for the last year preceding your dissolution?

A That's correct. The entire net income was distributed to me.

MR. HUNT: That's all.

May he come down now, this witness, so he can catch a plane?

MR. MUSSELMAN: One question, please, Mr. Prunty, Judge Prunty.

RECROSS EXAMINATION

BY MR. MUSSELMAN:

Q Was the public informed of the Dowling case prior to the primary?

A No sir. They were informed that everything was a matter of public record.

If you're referring to the Grand Jury report, that hadn't been filed.

Q That was subsequent to the primary, in May?

A It was subsequent to the qualifying date on the primary.

MR. MUSSELMAN: That's all.

MR. HUNT: Thank you, Judge.

SENATOR SHANDS: Judge Hunt, are you excusing him for the term?

MR. HUNT: No sir. He may be needed on another phase in this matter, Senator. We'll decide later on that this afternoon.

(witness excused)

MR. HUNT: Call Mr. Miller Walton, please.

MR. MUSSELMAN: What phase is this witness to testify about?

MR. HUNT: The Peoples Water & Gas vs. The City of Miami Beach, the fees in that case.

Thereupon,

MILLER WALTON,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A Miller Walton.

Q Mr. Walton, where do you reside?

A Miami, Florida.

Q Will you pull that mike up just a little closer to you?

How long have you lived in Miami?

A Since 1934.

Q Where did you reside prior to that time?

A Ft. Lauderdale, Florida.

Q Are you a practicing attorney?

A I am.

Q For what period of time have you practiced?

A A little over thirty-five years.

Q Has that time been spent in Ft. Lauderdale or Miami?

A All except the early years. The first short period was in Augusta, Georgia, and prior to that, in Palatka, Florida.

Q Mr. Walton, where did you receive your legal education?

A At the University of Georgia.

Q Will you state the name of your firm?

A Yes sir. The name of the firm is Walton, Lantaff, Schroeder, Atkins, Carson & Wahl.

Q Otherwise known as "We the People"?

A By some.

Q Mr. Walton, how many attorneys do you employ in your office?

A There are nine partners and three associates in the office.

Q And your office is located in the City of Miami proper?

A It is.

Q I'll ask you to state whether or not you participated actively in litigation which has been referred to as, I believe, Peoples Water & Gas Company vs. The City of Miami Beach?

A Pending in the Circuit Court of Dade County formerly?

Q Correct.

A Yes sir, I did.

Q Do you have the Court file of that case before you?

A I have part of the Court file here.

Q It is not all there?

A No sir, it is not all here.

MR. HUNT: Are there other parts that you have, Mr. Musselman, of the Peoples Water & Gas case? We only have one Court file.

MR. MUSSELMAN: We introduced in evidence everything that was sent to us from Mr. Leatherman.

BY MR. HUNT:

Q Mr. Walton, did you, for the purposes of this hearing, after talking to me on long distance yesterday afternoon to find out what you were subpoenaed for, bring up some of your own records?

A I did.

Q Will you, either from your own records, or from the partial Court files before the Senate, briefly state the nature of the litigation to which I have referred?

A The litigation was a suit in which the company attacked a rate-making ordinance adopted by the City of Miami Beach as being confiscatory of the company's property, and sought to enjoin the enforcement of that ordinance and to enjoin the City of Miami Beach from interfering with the company in charging rates which the company had fixed.

Q Did the institution of that suit follow appearances before the rate-making body itself?

A It did.

Q Will you state who represented the Plaintiff in the matter, as attorneys?

A Do you mean, now, before the City Council of Miami Beach, or in the Circuit Court?

Q Both, if you have the memory to give it to us.

A Well, Mr. Hunt, I must explain that I was not in the proceeding before the City Council of Miami Beach; neither was I in the suit at the time it was instituted.

Q Will you state your participation in it, then, briefly?

A I was employed in the suit in September of 1948, and thereafter participated actively in the suit until its conclusion.

Q You were employed to handle the Plaintiff's side of the litigation?

A Yes sir, in conjunction with two other counsel.

Q Who were the other counsel?

A Mr. Whiteside and my partner, Samuel O. Carson.

Q Now, will you state for the benefit of the Senate, something about the time consumed in the Circuit Court, in connection with that litigation, its reference to a Master, the amount of testimony, and the length of - - or volume of testimony taken before the Master, and in your own words, and with as much brevity as you may employ, give the Senate a picture of the size of the litigation?

A I don't know just where the starting point is on that.

The case was referred to Mr. Bandel, as Special Master. We had, if my recollection is correct, eighty days of testimony in the case.

After the testimony was concluded, we had, I believe, five days of oral argument before the Master, in which I made a two-day opening argument, and a closing argument which began one afternoon and took the remainder of the next day.

Exceptions were filed to the Master's report by both sides. Those exceptions were argued before Judge Holt on six days of oral argument, in which I believe that I made the major part of the arguments on behalf of the company, or the Plaintiff.

Very lengthy briefs were submitted, both to the Master and to Judge Holt. The case resulted in the final decree which is in the Court file that I have with me.

The final decree enjoined the City of Miami Beach from

enforcing the rate-making ordinance which it had adopted, on the grounds that the rate-making ordinance was an unconstitutional confiscation of the company's property in violation of the Constitutions of both the State of Florida and the United States. It determined that the rates and charges which the company had put into effect were not unreasonable and were not excessive; that the company was entitled to a rate of return of seven and a half per cent on its rate base, and that those rates produced it a return of only 7.28 per cent.

Later, there was a motion to prescribe the manner in which the company should recover from consumers the rate case expense incurred in that litigation, and the last connection which I had with the case was the argument before Judge Holt of that motion, which resulted in an order prescribing the method for the recovery of the rate case expense.

The litigation was lengthy, it was difficult, it was exceedingly complicated, and it was highly technical in every phase. From my own records, I have determined that my firm devoted to the litigation a total of two thousand eight hundred thirty-three and three-quarter hours. Of that figure, two thousand five hundred thirty-three and three-quarter hours is an actual record of the time devoted to the litigation beginning in April, 1949. The remaining three hundred hours is an estimate of the time devoted to it from September, 1948, until April, 1949.

The reason it was necessary to estimate that is that we started keeping actual records of time in April of 1949. I am convinced that the estimate of three hundred hours is actually an underestimate, on the conservative side.

Q Will you state approximately how many pages of testimony were taken before the Master?

A My recollection is that there were approximately, or slightly in excess of five thousand three hundred pages of testimony; that would be the legal size sheets, rather than the smaller ones.

Q Mr. Walton, with respect to the Master's fee, both as to final amount and payment, do you recall whether or not, at some stage of the proceedings before the Master, both Plaintiff and Defendant voluntarily made a payment to the Master, on account of his services in the case, and if so, in what amount?

A I did not participate in the payments made to the Master. Insofar as the company was concerned, that was handled, I believe, by Mr. Whiteside, who was regular company counsel. I was employed only in this particular case.

My recollection is that the company, during the proceedings, voluntarily paid \$12,500, and that the City, during the proceedings, voluntarily paid \$10,000. I am not absolutely certain of that, however.

Q Now, then, at the time of the hearing before Judge Holt, or prior thereto, had the parties or their attorneys attempted to negotiate out and agree on the items of recoverable costs?

A Subsequent to the entry of the final decree, counsel in the case had attempted to negotiate and agree on, not recoverable costs, but rate case expense.

Q Rate case expenses?

A Rate case expense.

Q Wait just a minute.

Now, can you enlighten the Court as to the meaning of "rate case expenses?"

A The rate case expense in the public utility field is considered to be all the expense of every kind which has been incurred or paid by the public utility company in prosecuting either a proceeding to obtain increased rates or court litigation to invalidate rates which have been prescribed.

Q Now, do I take it that included in such expenses would be attorneys' fees?

A Yes sir.

Q Now, as to the method of computation of the attorneys' fees which were later fixed by Judge Holt as recoverable costs - - - and I believe they were spread over some number of years - - - would you state what effect the order to which

I refer had upon the fixing of the fees, so far as the attorneys were concerned?

A I am not sure that I understand your question.

Insofar as the determination of the amounts of fees to be paid to attorneys is concerned, Judge Holt had nothing whatever to do with that.

Q Was that determined by the client itself with its own attorneys?

A I can speak only as to my own fee, or the fee of my firm. That fee was arrived at by negotiation with my client, and was paid in full sometime prior to the order in which the method of recovering rate case expense was fixed by Judge Holt.

Q Well, then, whether or not Judge Holt had entered such order had nothing to do with your collection of compensation from your client?

A Not the slightest. I had been paid my compensation before the motion to fix the method of collecting from consumers was even prepared.

Q Will you state the amount of the fee paid to your firm?

A \$65,000.

Q Do you know the amount of the fee which was paid to Mr. Whiteside's firm?

A Only from the Court record and the testimony in the record, which show \$50,000.

Q Do you know whether or not Mr. Whiteside had been paid substantially that entire amount before the matter came on for hearing before Judge Holt as to the order to which you last referred?

A According to the exhibit which was admitted in evidence at the hearing on the motion respecting the rate case expense, he had been paid the major part of his fee prior to that hearing.

Q And did any order that Judge Holt entered have anything to do with the fixing or payment of any portion of your fee or Mr. Whiteside's fee?

A No sir, it could not, because Judge Holt had no jurisdiction over those questions.

Q That was purely a matter of private contract between the attorneys and the respective clients?

A Purely.

MR. HUNT: Take the witness, - - - one more question.

BY MR. HUNT:

Q Were there other attorneys whose fees were likewise entered as costs in that final order, or approved as recoverable costs?

A Well, sir, I can't agree to your question of recoverable costs. I must classify that as rate case expense, but in so classifying it, they, likewise, were matters of private contract between the parties.

Q There were other attorneys?

A There were other attorneys, yes.

Q Will you state who they were, and the amount of the other fees?

A Mr. Patterson, Giles J. Patterson, of Jacksonville, was paid \$1,000, according to the exhibit which was admitted by Judge Holt; and the firm of Chapman & Cutler, of Chicago, was paid, in round figures, roughly, \$800; I don't remember the exact amount.

Q What was that last?

A Roughly, \$800, or approximately \$800. I can refresh my recollection from the exhibit, if you wish.

Q No, that's all right.

Mr. Walton, did you bring with you one or two volumes of the testimony taken before the Master?

A I did.

Q Would you exhibit them at this time, please sir?

A Yes sir.

These are Volumes 1 and 2 of the testimony taken before the Master. There are twelve such volumes, but on the short notice which I had, which I received yesterday afternoon, I was unable to provide any means of bringing the entire twelve volumes with me.

You can visualize that the testimony before the Master was approximately six times what you see there.

Q Mr. Walton, at the hearing before Judge Holt on the matter of the Master's report and the exceptions thereto, I'll ask you to state whether or not either the Plaintiff or the Defendant introduced any evidence in opposition to the final award of \$50,000 to Mr. Bandel, the Special Master appointed by Judge Holt?

A No such evidence was adduced.

Q Neither side introduced any evidence, is that correct?

A That's correct.

Q In opposition to the compensation to Mr. Bandel?

A That is correct.

Q Did either side take any appeal?

A Neither side took any appeal.

Q Did either side file a petition or a motion for rehearing upon that point?

A No sir.

Q I'll ask you to state what evidence, if any, was presented before Judge Holt in opposition to any of the attorney's fees which were noted in the record?

A None.

Q I'll ask you to state what evidence, if any, was presented before Judge Holt to the inclusion of the attorney's fees as rate case costs, or whatever you experts called it, in that final order?

A There was no such evidence.

Q And no appeal from any such order of Judge Holt?

A No sir.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. JOHNSON:

Q Mr. Walton, did I understand from your answers that you took the lead in much of this proceeding before the Circuit Court?

A Yes sir, that's correct.

Q Now, you also testified that attorneys' fees were just one of the items which could be assessed as rate case costs, is that right, sir?

A As the rate case expense, yes sir.

Q Is it correct that such expenses could be fixed only if the utility was the prevailing party?

A Would you say that again, please?

Q In other words, if the utility had lost the case, would it be proper to assess their attorney fees and their costs as part of the rate of the litigation expenses to be recovered from the consumers?

A I think it would not have been proper under those circumstances.

Q So then, in order to obtain a reimbursement of the fees which you charged to your client, the utility, and the fees that the other attorneys charged, it would have been

necessary for the Peoples Water & Gas to prevail in the suit, is that correct, sir?

A If you make that assumption, but the Peoples Water & Gas Company had already prevailed in the suit before any motion to tax the rate case expense was filed.

Q No, my question was, in order for your attorney fees to be taxed as expense, it was first necessary that the Peoples Water & Gas prevailed, is that correct?

A I think that's correct, yes sir.

Q Now, I believe Judge Hunt asked you whether the - - - in words to the effect of whether there was any evidence introduced concerning the reasonableness of the fees of the Master, and you replied in the negative.

Isn't it true that Mr. Shepard, one of the attorneys for the City of Miami Beach, protested strenuously and vigorously, before Judge Holt at a hearing, concerning the fee of the Special Master, Mr. Bandel?

A He argued against the allowance of \$50,000, but he produced no evidence.

Q But he did strenuously oppose it, didn't he?

A Yes, by way of argument.

Q Now, how much did Mr. Bandel receive for his services in this cause? Do you know the amount of money that he received?

A The fee allowed him was \$50,000.

Q I think you stated that he took eighty days of testimony, and also heard oral argument from attorneys for both sides, is that correct?

A That's correct.

Q Do you know what the compensation for a Circuit Judge in Dade County was at the time Mr. Bandel was receiving \$50,000 for his services in the case?

A I do not.

Q Was the sum in excess of \$18,000?

A I do not know.

Q Do you know who testified concerning the reasonableness of the attorney fees concerning the taxing of fees as legitimate cost of the rate case?

A I know who testified concerning the reasonableness of the \$65,000 fee to my firm.

Q Do you have any knowledge of who testified as to Mr. Whiteside's fee?

A My recollection is that Mr. Whiteside did.

Q Mr. Walton, for the benefit of the lay members of the Court, a Special Master sits as a substitute judge to hear certain phases of the case; is that a correct summation of what a Special Master does?

A In part that is correct, yes.

Q In other words, he takes the place of the judge to hear the testimony and to report his findings in the same manner that the judge would have done had the judge heard it himself, is that correct?

A Not entirely, no sir.

Q Well, will you explain to the Court, then, what a Special Master does?

A In this particular case, the authority of the Special Master was to hear the evidence, to rule on the admissibility of evidence, and make his findings and recommendations to the Court.

Q And then, after receiving those final recommendations, the Court could either accept them or reject them, is that correct?

A That's correct.

MR. JOHNSON: That's all we have.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Mr. Walton, will you state who testified before Judge Holt as to the reasonableness of the \$65,000 fee which had already been paid your law firm in the matter?

A I did, and I testified that it was less than a reasonable fee.

Q Is it not the usual, normal and customary procedure for such testimony to be given - - -

A Yes sir.

Q - - - before the Court?

And I believe you stated that Mr. Shepard, of the City of Miami Beach, produced nothing save oral argument against the allowance of the fee?

A Well, I do not believe that I testified anything respecting Mr. Shepard's attitude toward the fees.

Q I thought opposing counsel asked you if he had not strenuously objected to the - - -

A That was to the - - -

Q - - - that was to the Master's fee?

A That related to the Master's fee.

Q I beg your pardon. But no evidence was presented by Mr. Shepard, as regards the Master's fee?

A None.

Q Did Mr. Shepard protest against the attorneys' fees?

A To the best of my recollection, he did not.

Q And Mr. Bandel had previously been paid, prior to that hearing, according to your recollection, some \$22,500 as an advance against his eventual fee, is that correct?

A That's my recollection, sir.

MR. HUNT: That's all.

RECROSS EXAMINATION

BY MR. JOHNSON:

Q Mr. Walton, just a couple of more questions.

During the pendency of this rate litigation involving Peoples Water & Gas, and during which time Mr. Bandel held the position of Special Master, do you know how many other masterships he received from Judge Holt during this same period of time he was hearing this case?

A I do not know.

Q Do you know whether or not he was involved in a political campaign during the time that he was hearing the rate litigation testimony?

MR. HUNT: If Your Honor please, I don't believe what Mr. Bandel was involved in has any relevancy here, and I object to it.

CHIEF JUSTICE TERRELL: I don't think any of this political stuff has any reference whatever to this case, but it's been introduced.

Will you answer the question, Mr. Walton?

THE WITNESS: I beg pardon, sir; I couldn't quite understand that.

CHIEF JUSTICE TERRELL: I said you may answer the question.

THE WITNESS: He was engaged in a political campaign at one time, but whether it was during the pendency of this case, I'm not certain.

BY MR. JOHNSON:

Q You have no independent recollection?

A I have no independent recollection on the subject.

MR. JOHNSON: That's all we have.

MR. HUNT: That's all. Thank you, Mr. Walton.

THE WITNESS: Am I excused now?

MR. JOHNSON: We have no objection.

MR. HUNT: Yes sir, you're excused.

(Witness excused)

MR. HUNT: Will you call Mr. Cloeter, please.

Thereupon,

JOHN J. CLOETER,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name.

A I didn't hear you.

Q Something's wrong with the speaker system, I guess.

Will you please state your name?

A John J. Cloeter.

Q Where do you reside, Mr. Cloeter?

A Tucson, Arizona.

Q How long have you resided in Tucson, Arizona?

A Since last December.

Q December, 1956?

A 1956, yes.

Q And where did you reside prior to that time?

A Miami, Florida.

Q Did you come to Tallahassee direct from Tucson to attend the hearing?

A I came from Anaconda, Montana.

Q You were in Anaconda, Montana?

A That's correct.

Q What business or profession are you engaged in, Mr. Cloeter?

A At the present time, in minerals exploration.

Q Minerals exploration?

A Yes.

Q Are you actively exploring at this time?

A Yes sir, we are.

Q At what location? Montana?

A Yes, about four miles west of Anaconda, Montana.

Q Is that oil exploration?

A No, minerals.

Q Minerals?

A Yes.

Q Will you state, Mr. Cloeter, whether or not you know Mr. Thurman A. Whiteside?

A Yes, I know him.

Q How long have you known him?

A Since '47, I believe.

Q Will you state how you met Mr. Whiteside?

A I met him through his partner, Mr. Yonge, on a trip back from Rio.

Mr. Yonge had a seat in the same airplane beside me, and I got to know him.

Q Was that the late Jim Yonge - - -

A That is correct.

Q - - - Mr. Whiteside's former partner?

A Yes sir, that's correct.

Q And were you then in some business down in South America?

A We were in business in Miami, and I was ferrying airplanes to Brazil.

Q You were ferrying airplanes to Brazil?

A That's correct.

Q Are you a pilot yourself, Mr. Cloeter?

A I was then; I'm not any more.

Q I wish you would state whether or not you at any time have had any business relations with Mr. Whiteside?

A Yes, we have. We've had deals from time to time, and Mr. Whiteside acted as our attorney.

When we went into business, why, he helped us out.

Q Has he performed professional services for you?

A Yes, he has.

Q And has he, likewise, made joint investments with you in various enterprises?

A Yes, he has.

Q I'll ask you to state whether or not, among the investments and joint enterprises in which you and Mr. Whiteside have been associated, was there a so-called airplane cylinder deal?

A Yes, there was.

Q Now, in order that the Senate may be fully informed, will you state how your awareness of the cylinder situation first came about, and how the investigation of the matter proceeded, up to the point where you invited Mr. Whiteside to invest with you in it, if he desired?

A We had been in the business and received parts lists from various people that owned materials.

Q Now, when you say "we," whom do you mean?

A The company, myself.

Q Yes, all right.

A My wife and I; and I had noticed these part numbers of cylinders - - -

Q Now, wait a minute. Was that war surplus material?

A Yes, it was, but it wasn't in the hands of the Government any more; it was already in the hands of private owners.

Q All right, go ahead.

A And I had noticed these numbers. Nobody seemed to know what they were - - - I didn't. They didn't appear in the parts books.

Q Well, how did they appear? Just as numbers?

A Just as numbers, yes. We had taken the numbers off the boxes, and they were listed as parts, numbers, but the numbers didn't give you a clue as to what model engine they fit; they just had the part number and the - - -

Q Did you know they were airplane cylinders?

A Oh, yes.

Q But you didn't know for what engine, is that correct?

A No, we didn't know for what engine they were for, they just had the parts number on them.

Q Well, go ahead.

A And I found the pamphlet, part of a pamphlet that had the part number in it.

Q Where did you find that pamphlet?

A As I recall, in Oakland, California; and I bought it from them, bought it from the man, and - -

Q What was that? The pamphlet?

A Yes, bought the pamphlet, and it was a fairly recent one, a 1948 publication, and I bought that from him, and it gave the cylinder numbers in it. We got interested in the cylinders when we found out what they were for, and we made them an offer on the cylinders, made these people an offer on the cylinders, on the chance that they might - - could possibly have use. They were for one model engine only, and - -

Q What model was that, if you recall?

A It was a 2600-20.

Q What does that mean in English, to the layman?

A It's a Wright - - well, we always called it the 2600-20; it's a Wright Cyclone; it's a fourteen-cylinder engine, and was used in the Avenger.

Q In the Avenger?

A Yes. Different models were used in different airplanes; this particular model was used in the Avenger.

Q That was a World War II plane - -

A That's right.

Q - - - used by the Government?

A Yes.

Q All right, go ahead.

A And we thought there might be a possible use for them; they were late production, in the 1946 production.

So, I asked Mr. Whiteside if he wanted to play on it, because it was - - it was highly risky; there was a possibility that if they didn't use the cylinders, they wouldn't be used for anything else, but you could lose everything but the scrap value of the cylinders.

Q All right, what happened?

A And I asked him if he wanted to go along on it, and he said he did, and he asked me if I wanted the money for it, and I said, no, to wait until we got them shipped in, got the freight charges and everything, and then I said, "We'll bill you for it," and - -

Q Well, to what extent did Mr. Whiteside go along?

A Fifty-fifty.

Q Fifty-fifty?

A That's right.

Q And then what developed after his agreement to go along? Was any written contract drawn between you?

A No, there was none whatsoever.

Q Have you had a number of business transactions with Mr. Whiteside?

A Yes.

Q Have you ever had a written contract?

A No, never.

Q Have you ever asked for one?

A No.

Q Has he?

A No.

Q Now, go ahead and tell us what developed with respect to the receipt of the cylinders, and how you developed a market, or a sale for them?

A Well, we had a customer that we thought might be interested in them, and after we got them, we sent them a sample, and they okayed them, and much to our surprise, they ordered more than we ever thought they could use.

Q Now, how many did they buy?

A 1232.

Q Cylinders?

A That's right.

Q Were they crated?

A They were in individual boxes.

Q Individual boxes?

A That's right, one per box.

Q Well, now, speaking with reference to boxcar or big trailer truck capacity, can you give us some idea of how much space 1232 boxed cylinders took up?

A Well, an average van, that is, semi-trailer van, will take about 300 - - 295 to 300 cylinders.

I think we had a little over four vanloads.

Q You had what?

A I think we had a little over four vanloads.

Q Now, where were those cylinders taken and stored, if they were stored?

A They were brought into Miami and stored on Douglas Road.

Q In Miami - -

A Yes.

Q - - - on Douglas Road?

A Yes, we had leased a storeroom there.

Q For that purpose?

A I don't recall whether it was originally for that purpose, or whether we got it just before; I can't say that for sure, but we had other things in there, and I'm not sure what came in first.

Q I see.

Well, now, do you recall the dates of Mr. Whiteside's payments to you?

A He paid me by check, as I recall.

Q Do you recall when?

A Well, I - - - no, I can't give you that. I don't have it. It was - -

Q Mr. Cloeter, let me ask you this:

Did you testify before a Grand Jury in connection with this matter at a time when you had your records available?

A Yes, I had records available when I testified before the Grand Jury, but I couldn't bring them along, because I was in Montana and the records were in Tucson.

Q Well, do you have any recollection as to the - - - any of the dates of payment by Mr. Whiteside to you, and the amounts thereof?

A Well, the amount was - - - he paid me, I think, in two installments, on my recollection of it. I can't positively state the date on it.

I remember that he paid me on demand when I gave him the information, when I had it together.

Q Do you recall the total amount of his payment for his fifty per cent participation?

A That was - - - well, it was fifty per cent of the full amount, \$14,315.66. That would be - - - I would have to figure it out here.

Q That's all right.

Do you recall to whom you sold those cylinders?

A Yes, we sold them to Bristol Airplane Company.

Q Where is that?

A In Montreal.

Q Montreal, Canada?

A Right.

Q Now, then, what was the total investment?

A The total investment was, for freight and cylinders, \$14,315.66.

Q Did that include freight?

A That included the freight.

Q And the over-all sale price to the people in Bristol was what?

A For the bulk of the cylinders sold to them?

Q Yes.

A I don't have that; I don't have that information.

Q Do you recall what portion of the lot of cylinders was sold at that time?

A I believe it was 486, I believe, something like that, the total we sold to them, the total number sold to them.

Q 485?

A I think so, yes, I think that's correct.

Q Now, did you make sales to other agencies or companies?

A No, not while Mr. Whiteside and I were co-partners.

Q Well, then what developed, as between you and Mr. Whiteside, with respect to the balance of the cylinders?

A Well, we figured we'd milked that dry. We didn't think we could do any good anymore, and Mr. Whiteside suggested that he take them over.

Q On what basis?

A Well, he wanted to hang onto them, with the idea that some day they might, for some reason, become valuable again.

Q Well, on what basis did you sell your interest to him? On what basis did you sell to him?

A On the scrap value at the time, at market scrap.

Q Pardon?

A At market scrap value.

Q What was the market scrap value?

A Nine cents a pound.

Q Nine cents a pound?

A Yes.

Q So, you sold the - - - your interest in the remaining cylinders to Mr. Whiteside at the scrap value of nine cents a pound?

A That's correct.

Q Did you afterwards learn whether or not Mr. Whiteside sold any or all of those cylinders?

A He didn't sell any of them himself.

We later on sold some to Mr. Walsh, in Hasbrouck Heights, New Jersey.

Q In where?

A Hasbrouck Heights, New Jersey.

Q Do you know how many you sold to him?

A There were two lots; eighty-eight in one lot and eighty in the second lot. It was the eighty-eight lot which he returned. He did not keep them.

Q Now, you say "we." Did you assist Mr. Whiteside in marketing the remaining lot of cylinders which he had taken over?

A That's correct.

Q Did you collect any fee or compensation for your services in connection with it?

A I am going by memory. I think we charged him ten or fifteen per cent handling charges. I'm not sure about that; I cannot be positive.

Q Well, now, over what space of time were these cylinders eventually marketed?

A From '52 until, oh, about a year ago, I believe, the last - - - very end of them were disposed of.

Q There was a considerable spread of time there to eventually market all of them, is that correct?

A That's correct.

Q I'll ask you to state whether or not, after Mr. Whiteside had taken over your ownership interest in the remaining lot of cylinders, a sale was negotiated and the cylinders actually shipped to the purchaser, but later rejected?

A They were shipped - - - they were shipped to Mr. Walsh, and - - -

Q At an agreed price?

A Yes sir.

Q And what? Go ahead.

A And Mr. Walsh - - - I don't know whether the customer rejected them, or whether he had obtained some himself in another sale which took place at that time, but he returned - - - I agreed to take back eighty-eight of them.

Q What business was Mr. Walsh in?

A Aircraft parts, engine parts.

Q But a sale had been effected, and the cylinders actually shipped to him at one time, is that correct?

A Yes. In fact, the eighty-eight cylinders he returned were not our cylinders; they were shipped out of a lot that he had bought from the Government, but we agreed to accept those.

Q Now, do you know what the total yield of that venture was to Mr. Whiteside or anyone he may have had participating with him?

A You mean Mr. Whiteside's total yield on it?

Q Yes.

A Well, I believe that it was \$39,350.14.

Q And what was his total investment?

A One half of \$14,315.66.

Q Slightly over \$7,000?

A Yes, and plus the \$1,489.50 he paid me.

Q This thirty-nine thousand-odd dollars that you referred to, did that cover Mr. Whiteside's yield during the time you participated with him, or over-all?

A I think that is during the time we were partners in it. I believe that - - -

Q Well, in addition to that sum, do you have any personal knowledge of what his yield was after he purchased your half in the remaining lot?

A I think it was another \$4,760.

Q You think he got an additional \$4,760?

A Yes, for the eighty cylinders.

Q How many were left?

A Eighty.

Q Did you finally rebuy the cylinders that Mr. Whiteside had on his hands from him?

A I did.

Q Did you ever make disposition of them?

A I don't believe I understand your question.

Q Did you dispose of those?

A Yes, we disposed of them.

Q Now, Mr. Cloeter, briefly, what other business transactions have you engaged in with Mr. Whiteside?

A Well, we had - - - I had a piece of a company he was interested in, and he had a piece of one I was interested in.

Q What was the nature of the company?

A Aircraft engine parts, a business in California.

Q He had a piece of that?

A Yes, he did.

Q And what was the company that you were interested in, that you controlled?

A It was a window company in Miami.

Q A window company in Miami?

A That's right.

Q Are those enterprises still under way, or have you settled up those interests?

A Well, we swapped them straight across. I took his interest in Walt Hawkins, Incorporated and he took my interest in the window company.

Q Will you spell that last, Walt Hawkins?

A H-A-W-K-I-N-S.

Q W-a-l-t, Walt Hawkins?

A W-a-l-t Hawkins.

Q Are you, at the present time, engaged in any investment enterprise with Mr. Whiteside?

A Well, we're - - - he's a partner with us on an exploration deal we're doing now in Montana.

Q What is the type of that exploration?

A Doing a gravimetric and a geochemical survey on property.

Q Is that preliminary to drilling or mining of what?

A We have just started drilling on it.

Q You have started - - -

A To check it out, yes.

Q For oil?

A Minerals.

Q For minerals?

A Yes.

Q Mr. Whiteside has a monetary participation in that with you?

A He has agreed to go fifty-fifty on the cost of the development.

Q Do you have a written contract between you?

A Do not have, no.

Q Do you expect one?

A No. I'll send him a bill when I'm through.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. JOHNSON:

Q Mr. Cloeter, what did you say was the name of the window company in Miami?

A The name of the window company?

Q Yes sir?

A I had trouble remembering it before the Grand Jury, and I'm not sure of it now.

I think it's R. B. Leonard Company. I really don't know much about it, and I keep forgetting the name of it.

Q And you have had a number of business dealings with Mr. Whiteside, I believe you stated, is that correct, business dealings?

A Yes sir, that's correct.

Q He is a man of means, is he not, Mr. Cloeter?

A Well, I guess he is, as far as I know.

Q There's no question in your mind but what that he would be able to raise the cash to go in with you on the cylinders, was there?

A No, none whatsoever.

Q The fact that he did not pay you immediately did not mean that he did not have any money, in other words, did it?

A No. He actually offered to pay me for his interest, and to simplify it, I told him we would bill him for it when we knew what the charges were.

Q In other words, you did not know what the total amount would be, is the reason he did not pay you immediately, is that right?

A That's right.

Q Now, when did you make the first sale of cylinders to Bristol Airplane Company, Mr. Cloeter?

A It was not very long afterward. I don't know that I have the first date.

I have a date of 4/11/52. Whether that is the actual date of sale, I couldn't say, but it was approximately that time.

Q Isn't that the date that you turned over your check to Mr. Whiteside for his portion of the first sale?

A That could be; I believe that's right.

Q When did you consummate that sale?

A I can't answer that.

Q You have no recollection?

A No, I couldn't. It would be somewhere, oh, not too long before that.

Q Approximately how many weeks before you were able to turn the check over to Mr. Whiteside was the sale consummated, approximately, if you know?

A I don't understand the question.

Q How long before you got the money was this sale completed, in other words?

A How long before I got the money was the sale completed?

Q Yes sir.

A That's kind of hard to answer.

Q Well, can you estimate it?

A Sometimes it would be very rapidly, and sometimes, with customs, and so on, holding it up, it might take as high as sixty days, and sometimes we might receive it in a couple of weeks.

Q In other words, between two weeks and sixty days prior to getting the money for that sale to Bristol Airplane Company, you had consummated the deal, then, is that right, sir?

A That's right.

Q Now how many cylinders were sold in that first batch?

A Twenty-six, I believe.

Q And later on, did you sell other batches of cylinders to Bristol Airplane Company?

A Yes, we did.

Q What were the other batches you sold to Bristol Airplane Company?

A There were 300, and 152, and eight.

Q And you had an understanding with Bristol, at the time you sold them the first group of cylinders, that they would probably need some additional cylinders?

A We knew, or thought we knew, that they would require additional quantities. We didn't know the quantities, and we were very surprised when they did order that amount.

Q But you anticipated some additional sales to them at the time you made the first sale?

A Yes, oh, sure, we kept on anticipating.

MR. JOHNSON: That's all we have.

MR. HUNT: That's all, Mr. Cloeter. Thank you.

MR. JOHNSON: We have no objection to excusing this witness, if you desire.

(Witness excused)

SENATOR DAVIS: Mr. Chief Justice - -

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: - - - I'd like to inquire of the attorneys for the Defense how long the direct will take on the next witness.

MR. HUNT: The direct on the next witness will not take over ten minutes, I promise.

SENATOR SHANDS: Mr. Chief Justice, I move that we take the next witness on direct, and dispose of that witness.

CHIEF JUSTICE TERRELL: Call the witness, Mr. Hunt.

MR. HUNT: Call Mr. Walker.

For the benefit of the Court, Your Honor, this comes under the Managers' alleged specification Article I (b) 1, Belmont Park Motel; the matter is styled "The First Federal Savings & Loan Association."

Thereupon,

W. H. WALKER, JR.,

a witness called and duly sworn for and in behalf of the Respondent, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name?

A W. H. Walker, Jr.

Q Where do you reside, Mr. Walker?

A In Miami Shores, Dade County, Florida.

Q How long have you lived in Dade County?

A Since 1927.

Q Are you a practicing attorney there, Mr. Walker?

A I am.

Q What is the name of your firm?

A Blackwell, Walker & Gray.

Q Will you state for the Senate the number of attorneys employed in your firm?

A There are twenty-six.

Q Twenty-six?

A Yes sir.

Q Does the firm of Blackwell, Walker & Gray handle the legal business of the First Federal Savings & Loan Association?

A We do.

Q Do you know Circuit Judge George E. Holt?

A I do.

Q Have you and your firm actively practiced in his Court?

A Yes sir.

Q We have before the Senate for consideration the foreclosure matter referred to as the Belmont cases, in which the First Federal Savings & Loan Association was Plaintiff.

Am I correct in the assumption that there were three associated cases filed under that designation?

A Correct, yes sir.

Q Will you tell the Senate briefly what this property consisted of, Mr. Walker, and where it was erected?

A It consisted of two hundred twenty units, or rooms, which were in twenty-one separate buildings, located on three adjacent pieces of land.

Q Two hundred twenty units?

A Yes sir.

Q Located in how many separate buildings?

A Twenty-one.

Q Twenty-one separate buildings?

A Yes sir.

Q And was this in the nature of a construction loan which had been granted by the First Federal Savings & Loan Association?

A Yes, it was.

Q Will you state the total amount of the loan?

A The original loans were \$664,000, I believe.

Q Am I correct in the statement that two of those cases were filed on January 13, 1954? You may refer to any records you have?

A Yes, two were filed on the 13th of January, and one filed on the 15th of January.

Q Am I correct in the statement that the first case filed under the filing system was processed in the division of Judge Holt?

A I believe you are, sir. There were two cases that fell in his division, and one in some other Judge's.

Q Two of them fell in Judge Holt's Division?

A Yes sir.

Q And one in Judge Wiseheart's Division, is that correct?

A Yes sir.

Q Now, I believe Judge Holt, upon your application, appointed co-receivers to take over this property, did he not?

A He did, sir.

Q Will you describe to the Senate what the condition of the property was at the time you filed the suit?

A Well, the property was about eighty per cent completed. The sewage disposal system wasn't in operation yet, had not been through the estate; the winter season was, the big part of it, was to start in about a month; so, we were very anxious to have the building completed and be able to get some of the income from the tourists.

Q Now, you mentioned the sewage, or the sewage disposal system.

Was it necessary to construct your own disposal system of some peculiar engineering design?

A Yes, we had a complete separate system, one of the first ones ever used in that part of the country, and we had considerable trouble in getting it in operation.

Q Did you collaborate with the State Board of Health, or any other State authority in that connection?

A Yes sir, we had a Mr. Lee who, I believe, was State Director, and he recommended to us an engineer in Gainesville, who came down to help put the system in operation.

Q Now, what was the nature of the complaint which you filed in the Court, or the complaints, rather, on 13 January, and the third, on 15 January, 1954?

A Well, each of the three mortgages had a payment due on them on November 25, 1953, and they were more than thirty days in arrears.

Also, the owners of the property - - - there was a group of them - - - could not agree on putting in any additional funds, and it was felt that the only way to preserve the property and to open it in time for the season, would be to file a foreclosure suit and have a receiver appointed, and all litigants agreed to that procedure.

Q You say the parties all agreed to the proceeding?

A Yes sir, they did.

Q Did the parties sign a stipulation to that effect at that time?

A They did, yes sir.

Q Do you have the stipulation, or a photostat of it with you?

A Yes, I have it here. I - - - do you want it?

Q Yes.

Now, Mr. Walker, prior to the signing of this stipulation by your firm and the firm of Ward & Ward, on behalf of the Defendants, had you collaborated with the Defendants and their counsel in an effort to amicably work out the situation?

A Yes, that had been going on since about the 1st of November, and in fact, I had filed a suit earlier, in the first part of January, around January 4 or 5, and the day that suit was filed, they came in my office and asked me to dismiss the suit, that they would, within a week or so, arrange - - - have arrangements completed to put additional money into it, and I dismissed that suit.

Q You had previously filed a foreclosure action?

A Yes sir.

Q And upon their solicitation, you agreed to dismiss the first action, and give them additional time?

A I did, sir.

Q Were they able to refinance within the additional time?

A No sir, that's why I filed the three suits.

Q And was this stipulation, dated January 14, 1954, a part of the agreement which you made with them at that particular time?

A It was, sir.

MR. HUNT: We would like to offer this stipulation in evidence.

MR. MUSSELMAN: Was that stipulation in the Court file?

MR. HUNT: No.

(Whereupon, the stipulation was received and filed in evidence and marked Respondent's Exhibit Number 10)

BY MR. HUNT:

Q Mr. Walker, that stipulation was not processed in the Court file, was it?

A No. I thought it was, but when I gathered my papers to bring to Tallahassee, I found it in my files.

Q Pardon?

A I found it in my files when I came to Tallahassee.

Q Do you recall whether or not, when you made your first appearance before Judge Holt in this matter, this stipulation was exhibited to Judge Holt?

A Yes, it was.

Q Were there more than one stipulation?

A There were three of them, one for each case.

Q I notice the first one I introduced, signed by the attorneys, the one I hold in my hand, seems to be signed by a number of firms of attorneys.

What's the reason for the difference there?

A Well, the reason for that is that one parcel of land had more Defendants to it than the other did.

Q Had more what?

A Had more parties that had interest in the property.

Q Well, one parcel was about double the size of - - -

A Yes sir.

Q - - - either of the others, of the other two, was it not?

A That's right, yes sir.

Q That's the parcel that drew more attorneys and more Defendants?

A Mr. Hunt, I do not recall.

MR. HUNT: We'd like to offer the other two stipulations.

BY MR. HUNT:

Q Those stipulations were signed by all attorneys of record in the cases?

A Yes sir, they were.

(Whereupon, the stipulations were received and filed in evidence and marked Respondent's Exhibits 11 and 12, respectively)

BY MR. HUNT:

Q Now - - -

A They were signed by all the attorneys, excepting the attorney for the fee title owners.

Q Well, now, the other attorneys who signed represented whom?

A One attorney represented Mr. Yuille, who owned the fee title to one of the parcels, and the other one was a Mr. Entine, who owned the other parcel.

Q Well, now, when did you appear before Judge Holt and apply for the appointment of a receiver?

A On January 18.

Q And what happened at your audience before Judge Holt?

A Well, before I went to Judge Holt's office, I called up the principal attorneys who were interested in the transaction, and asked them if they would come with me, and they said no, that they had already signed off their rights.

I explained the situation to Judge Holt and showed him the stipulations that were signed, and I told him that we - - in view of the big season being so close by, that we wanted the job done in a hurry, that there was a whole lot of money at stake, and that we were having trouble with our sewer system, and for that reason, that I would like to have, I would like to have a Mr. J. Didrence appointed - -

Q You would like to have whom appointed?

A Mr. J. Didrence.

Q Didrence?

A Didrence.

Q How do you spell "Didrence"?

A D-i-d-r-e-n-c-e.

He was also an attorney and engineer.

Q He was an attorney and an engineer?

A Yes sir.

Q Had he previously performed some legal work for your office?

A Yes, he had examined abstracts for us and handled some loans.

Q Is he at this time associated in your firm?

A He is now, yes sir.

Q Go ahead. What happened?

A I also told the Judge I wanted somebody who had time to spend there, to get the furniture moved in, the buildings cleaned up so that they would be in operation as soon as possible.

He suggested a Mr. Kurlan, whom I did not know, and stated that if Mr. Kurlan was not satisfactory to me, or his services, that he would replace him at any time.

The order was then signed, and he inserted in the order the name of Mr. Didrence and of Mr. Kurlan.

Q Judge Holt then appointed co-receivers, Mr. Didrence, whom you had suggested, and Mr. Kurlan, whom he suggested, is that correct?

A That's correct, yes sir.

Q State what happened following that?

A I returned to the office, and as I recall, called Mr. Kurlan by phone and made an appointment to have him come to my office and discuss the matter with me, which he did do, about three or four days later.

Q Now, what happened after the receivers - - I presume they qualified and went to work on the situation, is that right?

A They did, yes sir.

Q State to the Senate what developed, whether or not they performed to your satisfaction, and what happened?

A They performed to my satisfaction and really did a grand job.

They audited the books of the contractor; they entered into new contracts to complete the buildings; they checked into the furniture contract and deleted items that were not necessary; they put the furniture in the buildings; they set them up, and about February 19 or 20, the buildings were ready for occupancy, and they rented rooms, I believe, about that date; within a week after they opened, they had around one hundred fifty rooms leased out.

Q Now, what happened with respect to the litigation?

A The litigation sat dormant until on January - - no, until July 13, when the final decree was entered by the Judge; the rental property was sold on July 29, and the clerk's certificates were issued on August 10.

Q Will you state the over-all amount of the final decree of foreclosure?

A The final decree totaled \$1,021,000.

Q Now, did that include unpaid principal, interest, receivers' certificates and other such items?

A It did, yes sir.

Q Did your company, or did you, on behalf of the First Federal Savings & Loan Association, bid in those properties at the Master's sale?

A Yes, we did.

Q Can you state the bid price, the total bid price?

A \$800,000.

Q And the purchase of that property at public sale was later confirmed and approved?

A Yes sir.

Q Now, what happened, with respect to the co-receivers? When - - how long were their services used, and when were they paid, if they were paid?

A Well, they were paid; Mr. Kurlan received \$10,000, Mr. Didrence received \$5,000.

Kurlan received \$5,000 on June 22, and Mr. Didrence received \$5,000 on July 16 - -

Q This is all '54?

A Yes sir.

Q Good.

A And Mr. Kurlan \$5,000 on July 27.

Q On July 27?

A Yes sir.

Q He received his final payment?

A Yes sir.

Q Now, I want you to state to the Senate in what manner those fees were set?

A Well, when we were winding up the foreclosure, why, of course, the question of fees arose, and after a very brief discussion, they told me to set them.

So, I discussed it with the officials of the First Federal, and they decided Mr. Didrence's fee would be \$5,000, and Mr. Kurlan's, \$10,000.

Q Thank you.

A I informed the gentlemen of those figures, and they were satisfied.

Q Now, was Judge Prunty in that picture, as attorney for the receivers?

A Yes, he was.

Q Do you recall how he came into the picture?

A Yes sir.

Q Will you state it?

A The - - shortly after the appointment of the two receivers, they were in the office, and the question came up as to drawing up the receivers' certificates and petitions to get the money, and I told them that I felt there may possibly be some diversity of opinion, as far as the First Federal was concerned and themselves, insofar as the operation of the property, and how it should be completed, and that I felt they should employ their own attorney.

Mr. Kurlan asked me if I knew Mr. John Prunty, and I told

him I did, and as far as I was concerned, he was a very acceptable choice.

Q And did the co-receivers then arrange to employ Judge Prunty to represent them - - -

A Yes sir.

Q - - - as their attorney in the matter?

A They did.

Q What bond were the receivers placed under at the inception of the foreclosure?

A They were placed under a bond of \$50,000 in each of the three cases; in other words, \$150,000 on each receiver.

Q Now, to complete the construction, is it correct that approximately \$291,000 in receivers' certificates were issued?

A There was a total of \$285,167.79 issued in receivers' certificates.

These amounts included a down payment on the furniture and a settlement of the claim for the air-conditioning; also, the amount of money to complete the buildings.

Q Were there questions involved in that foreclosure of priority of liens, or were those matters all adjusted and settled?

A They were all adjusted and settled.

Q Now, on the question of fixing the fees, at the conclusion of the foreclosure, and after your company had purchased in the property at a bid price of \$800,000, did you consult Judge Holt with respect to the amount of compensation to be paid the receivers, or their attorney?

A No sir.

Q Did you take it up direct with the receivers and their attorneys?

A I did.

Q Did you likewise call in Judge Prunty and discuss the matter with him?

A I did, sir.

Q And will you restate the amount of fees which were settled by mutual agreement between yourself, the co-receivers and their attorney?

A Mr. Didrence received \$5,000, Mr. Kurlan, \$10,000; and Mr. Prunty, \$10,000.

Q Were those compensation awards agreeable both to the receivers and their attorney, and to the First Federal Savings & Loan Association?

A Yes sir.

Q Did Judge Holt ever enter an order in respect to those fees?

A I don't believe he ever did, sir. In fact, I don't believe I ever discussed the fees with him.

Q Did you take that up with the Board of Directors of your company, and gain their approval?

A I did, yes sir.

Q There was no appeal of any kind from the foreclosure decree?

A No, there was - - - this was one lawsuit in which everybody was happy, even the one who lost.

Q I want you to state to the Senate whether or not you found Mr. Kurlan to be competent or otherwise?

A Yes sir, we found him to be very able, and we were very pleased with his services, and in fact, a year later, we had occasion to file another foreclosure suit against a motel, and in that instance, I again asked the Judge to appoint Mr. Kurlan, and that was done.

Q What particular case was that? Do you recall?

A That was a case involving the Tahiti Motel.

Q Did Mr. Kurlan, likewise, perform to your full satisfaction in that case?

A He did, sir, and it didn't last very long, and I believe the purchaser of the property arranged his fee in that matter.

Q The purchaser of the property arranged his fee in that case?

A Yes sir.

Q Do you know what Circuit Judge appointed Mr. Kurlan?

A That was Judge Crawford.

Q Judge Crawford?

A Yes sir.

Q Would you, on any future occasion in a matter involving a receivership, be satisfied to again have the services of Mr. Kurlan?

A I would, sir. In fact, I would ask for him.

Q You would ask for him?

A I would.

MR. HUNT: Take the witness.

CROSS EXAMINATION

BY MR. HOPKINS:

Q Mr. Walker, we'll just ask you a few questions about Mr. Kurlan.

Will you give us the date that he was appointed as receiver for the Belmont Motel?

A I believe it was January 18, 1954.

Q And over what period of time did he serve?

A He served until the sale of the property; I'd say about the latter part of July, July 27, 28, around in there.

Q When you say "July," what year do you mean?

A 1954, sir.

Q And he merely served from January until July of the same year?

A Yes sir.

Q Will you give me the dates of those payments that were made to him, please, for fees?

A A payment of \$5,000 was made on June 22, 1954, and a payment of \$5,000 was made on July 27, 1954.

Q Were you aware of the fact that he was receiver of the Variety Hotel at the same time, from April 15, '54, until he left for Europe, in July of the same year?

A I knew that he was receiver for the hotel, yes.

Q Now, what part of his time did Mr. Kurlan spend on this job?

A I can't answer that, sir, but I do know that any time he was wanted, he was available.

Q You are familiar with the fact that he left for Europe on the 29th of July, is that correct?

A I knew he left for Europe, but I didn't know what date it was.

Q And the last part of the fee was paid two days before he left on that trip, is that right, \$5,000?

A If he left on the 29th, that's correct, sir.

Q Then, the only period of time that he served as receiver at all in this particular case was from January 18, 1954, to July of 1954, is that correct?

A That's correct, yes sir.

MR. HOPKINS: We have no further questions.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Mr. Walker, one further question:

Upon Mr. Kurlan's return, were he and Mr. Didrence continued in charge of the property until you eventually effected the sale of it?

A Yes sir, they - - the same organization that they had set up which, I believe, Mr. Kurlan set up, continued to operate the building throughout the summer, and Mr. Kurlan suggested to us that if we could get some oceanfront property in addition to this, it would facilitate the sale.

Q Now, do we understand that this property was on the bay side of Miami Beach?

A It is, yes sir.

Q And you said Mr. Kurlan suggested that you should have an oceanfront property connected with it, is that correct?

A That's correct.

Q What happened in that connection?

A Well, I negotiated then, and obtained an option from the owners of some oceanfront property, which was just across the street from Belmont Park, and - -

Q At what price?

A Paid \$500,000 for it.

You paid \$500,000 for it?

A Yes sir.

Q Was that acquired by your company?

A Yes sir.

Q And was it added to the property located on the bay side, about which you have testified?

A It was, sir.

Q And did you later sell it altogether?

A Yes sir.

Q Now - -

A And when Mr. Kurlan returned from Europe, he continued to evidence interest in our property and its management, and any time a red hot prospect showed up, why, he'd take the people through it, and on October the - - September 17, we made a conditional agreement to sell the Belmont Park property and that across to the ocean, for \$1,700,000, the condition being the obtaining of the approval of the State Health Department in regard to the sanitary sewer system, and that was obtained, and we completed the transaction on October 27, 1954, which was not - - we paid no real estate commission, nor did we pay Mr. Kurlan any money for his services.

Q You didn't pay Kurlan any further money for his additional services?

A No sir.

Q And he had assisted you in making that deal?

A He did, sir.

Q Now, the \$1,700,000, did that include, roughly, your \$1,200,000 foreclosure decree, or decrees, plus your investment of an additional \$500,000 for the oceanfront property?

A It did, sir.

Q And your company then came out, how would you say, from the over-all transaction?

A We came out over, very well satisfied.

Q Have you ever had occasion to even discuss the amount of the fee you and your company arranged and settled up with these gentlemen for since it was accomplished?

A I didn't understand your question.

Q Have you had occasion to discuss with Judge Holt the amount of compensation that you and your company paid to the co-receivers or their attorney?

A I have never discussed it with Judge Holt.

MR. HUNT: That's all.

RECROSS EXAMINATION

BY MR. HOPKINS:

Q Mr. Walker, do I understand the Court did not approve those fees which you paid the receivers?

A I never asked the Court for approval.

Q It is now your testimony that there's no order in the file approving that \$10,000 fee?

A As far as I know, there is no order in the file.

Q And this was a foreclosure matter?

A It was, yes sir.

MR. HOPKINS: No further questions.

REDIRECT EXAMINATION

BY MR. HUNT:

Q Have you examined the file recently, Mr. Walker?

A I haven't examined the Court file since the final decree was signed.

MR. SUMMERS: May we have that file, please?

BY MR. HUNT:

Q Will you examine the record, Mr. Walker, and state whether or not you find an order reflecting the amount of fees?

A I shall.

SENATOR POPE: Mr. Chief Justice, I'd like to raise a point of order, please.

CHIEF JUSTICE TERRELL: Are you through, Mr. Hunt?

MR. HUNT: As quick as he answers this one question. I have no further questions after he answers this one.

MR. SUMMERS: See if you can find the order of final discharge.

THE WITNESS: I do see an order here - - a motion for final report and for discharge, but I don't - - I can't find anything like that in here.

BY MR. HUNT:

Q Pardon?

A I can't find it.

Q You don't find any order on the fees?

A No sir, I don't.

MR. HUNT: That answers the question.

MR. HOPKINS: We have no further questions.

(Witness excused)

SENATOR POPE: Point of order, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: The point of order is well taken. The Court will stand adjourned until 9:30 tomorrow morning.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 5:25 o'clock P.M. until 9:30 o'clock A.M., Wednesday, August 7, 1957.